

# NATURAL RESOURCES, A NATIONAL RESPONSIBILITY



**APRIL 15, 2010**

**Briefing of the  
Commission on Security and Cooperation in Europe**

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**Washington: 2012**

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## ABOUT THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

The Helsinki process, formally titled the Conference on Security and Cooperation in Europe, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. As of January 1, 1995, the Helsinki process was renamed the Organization for Security and Cooperation in Europe (OSCE). The membership of the OSCE has expanded to 56 participating States, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia.

The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <[www.osce.org](http://www.osce.org)>.

## ABOUT THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <[www.csce.gov](http://www.csce.gov)>.

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## Commission on Security and Cooperation in Europe Washington, DC

The briefing was held at 11 a.m. in room 2325, Rayburn House Office Building, Washington, DC, Shelly Han, Policy Advisor, Commission on Security and Cooperation in Europe, moderating.

*Panalists present:* Shelly Han, Policy Advisor, Commission on Security and Cooperation in Europe; Joseph C. Bell, Partner, Hogan and Hartson; and Chair, Advisory Board, Revenue Watch Institute; Karin Lissakers, Director, Revenue Watch Institute; and Saleem Ali, Associate Professor of Environmental Studies, University of Vermont.

Ms. HAN. Good morning.

[Off-side conversation.]

Ms. HAN. Good morning, everyone. I'd like to welcome you to the Commission on Security and Cooperation in Europe's briefing on the Natural Resource Charter. The commission has the mandate to monitor implementation of the Helsinki Accords, which were signed 35 years ago this year.

And those accords focus on three dimensions: security, economics and the environment, and human rights. At the Commission, we tend to focus our efforts on issues that cut across all three dimensions. And in the case of the extractive industries, it's a natural focus for us because we can see where the impact of the oil, gas, and mining sectors have implications for security, implications for economic development, implications for the environment, and implications for human rights.

The Natural Resource Charter is aimed at giving countries the tools they need to fully develop their natural resources for the good of the whole country. As it was launched last year, I was struck by how far we've come in terms of bringing the sometimes very difficult conversation of extractive industries into the lexicon of world leaders. But I was also struck by how much farther we need to go to achieve real progress on development and improvement of human rights.

In today's briefing, I hope we can accomplish a couple of things: First, I'd like to come away with a good understanding of the charter itself—how it's being used, how it's being developed and how it's actually going to grow in the future. And second, I hope that we can have a candid conversation on what gaps remain and specifically what steps the Commission itself, the U.S. Congress, the State Department, international organizations and others can take to address those gaps.

Fortunately, we have an expert panel that will make what would otherwise be a daunting task, a walk in the park. The full bios of our three witnesses have been distributed, but let me introduce them briefly. First, we're going to hear from two people who were instrumental in developing the charter from its inception.

On my right here is Mr. Joseph Bell, who is a partner at Hogan and Hartson and an experienced advisor to developing countries particularly in the extractive industries. And then on my left is Ms. Karin Lissakers, the Director of the Revenue Watch Institute, who spent a number of years as the U.S. Executive Director at the IMF, as well as a luminous career at the State Department and on the Hill.

We are pleased that we have Dr. Saleem Ali joining us via videoconference from the University of Vermont. Dr. Ali is a Professor of Environmental Studies and is actively involved in U.N. projects and most recently published a book titled, "Treasures of the Earth: Need, Greed and a Sustainable Future."

I'd like to note for the audience that we will have an opportunity for questions from the audience at the end of the statements here, so if you'd like to prepare in your mind some questions, you'll have an opportunity to address the witnesses at that time. So Mr. Bell, if you could start us off with your testimony. Thanks.

Mr. BELL. And the fact that I'm sitting here has nothing to do with alienation. [Laughter.] It's simply I cannot fill the seat of the person who was here without having my chin on the table. [Laughter.] In any case, thank you for the invitation to talk about the resource charter. My colleague, Karin Lissakers, who will discuss how the charter was developed and its current state and how it fits in with other international initiatives. I will touch upon some of the just basic substantive principles incorporated into the charter. And the full document is part of the record.

As we all know, natural resources—oil, gas, minerals—have been the source of many conflicts, much corruption and on occasion, great environmental damage. Even today, competition is fueling conflicts in the Eastern Congo, the Niger Delta, and elsewhere. But natural resources also provide an opportunity to support growth and development. There are successful cases: Botswana, Norway, even the history of the United States.

Now, resource management can be a thickety challenge for developing countries with weaker institutions, with limited human resources and where such resources can bulk very large in government revenue. But success is possible and that success is not only a benefit to the country and its citizens, but also to the international community in reducing conflict, overcoming poverty and, we hope, producing a more stable international environment.

The charter enhances the likelihood of success by trying to draw together what we know about the wise development of natural resources and to provide that information in a useful format to governments and societies in resource-rich countries. It's organized around 12 principles. The first 10 are really directed to citizens and governments in countries having natural resource wealth and the other two are directed to the international community and home governments—that is, governments that host the companies that do the exploitation.

Furthermore, the charter is actually elaborated at three different levels. There's the general principles, which are about one sentence long. There is a second level of explanation, which is a slightly longer elaboration. And then there's a rather important third level, which is much more extensive, pulling together experience in various countries and

elsewhere. It is a work in progress. We are still receiving comments from many different groups and so the final product is still a ways out there.

Now, under the Extractive Industries Transparency Initiative (EITI), probably known to most everybody in this room, there has been much focus on one important aspect of resource development: the transparency of payments to the government by private entities or by—not necessarily private entities—by producers. Now, the resource charter reinforces the EITI, especially with respect to the importance of transparency, but it goes beyond EITI by looking at the entire value chain from the decision to develop or not to develop, the development process itself and very importantly, how to use the resulting revenues.

Outside the Anglo-Saxon tradition, natural resources are the property of the nation. And the principles begin with the basic notion they should be used to secure the maximum benefit for the citizens of the host country. The implementation of this, simply stated—an unexceptional idea—is, in fact, not easy. It requires many difficult decisions. Oil, gas, and mining projects are technologically complex, capital intensive, usually have very long investment lives and are affected by highly volatile commodity markets. Moreover, if not properly managed, they can impose very significant social and environmental costs.

Getting these decisions right in any country requires good processes, good technical knowledge and, in the end, good judgment. A number of the precepts actually involve the technical issues of resource management: What is the role of competition? What are the options for the fiscal regime? What basic principles should guide state-owned companies? What are the social and environmental risks and how can they be mitigated? These tools emphasize the use of competition to maximize value to the country and the adoption of fiscal regimes that have flexibility to adjust to changing economic and social conditions over the long periods typically required for resource extraction.

Certain of the precepts deal with process, especially the importance of transparency and public involvement in resource use. The history of resource exploitation is filled with much bad history—secret dealings, private enrichment. The charter emphasizes that these resources are public assets, that citizens have the right to information about their development. Moreover, such information is a basic element in getting policies correct and in building constituencies that will support such policies over the long term.

On the expenditures side—and this is important—the charter holds that resource revenues should be principally devoted to promoting sustained economic growth. Resource development needs to be integrated with the country's long-term development plans. And the additional revenues should be used to accelerate a movement along that plan.

Now, this may seem an obvious conclusion, but there's been much debate about how natural resource revenue should be saved and how much spent currently and on what. Some have argued that revenue should be deposited in some sort of future generations fund with only the interest being spent to support the budget.

While appealing on its face, in fact, the returns on investment and social and physical infrastructure within the country should in most cases be much higher than the returns available on internationally held funds. Even more so, when one considers the vulnerability of such funds to future rating, particularly for poorer countries but also for countries such as our own, it is this internal investment that sets the foundation for prolonged and significant economic growth—a process which increases the welfare of both current and future generations of citizens.

The charter's value rely on providing good advice, hopefully wise advice based upon experience, as to how a country should go about this critical process of converting the wealth in the ground into permanent wealth for its citizens. And we will all be beneficiaries where countries are successful in this task. Thank you.

Ms. HAN. Thank you, Mr. Bell. Ms. Lissakers?

Ms. LISSAKERS. Thank you very much. Shelly, we really appreciate this opportunity to present to the Helsinki Commission on the Natural Resource Charter. My institute—the Revenue Watch Institute—is an independent, not-for-profit organization dedicated to promoting effective, transparent, and accountable management of mineral resources in resource-rich countries. And my team and I have participated in the creation of the resource charter and are very much involved in carrying it forward.

Joe Bell just summarized some of the principal elements of the charter. I'd like to talk to you a little bit about the process and where we go from here. The broad goals of the charter are twofold. The first, as Joe said, is to provide a practical guide for policy-makers in resource-rich countries, particularly developing countries that struggle with the complexities of managing valuable, finite, capital-intensive mineral resources and meeting the challenges of highly volatile revenue streams these will generate.

Now, this advice is certainly not limited to developing countries however as we've seen in the United States with the fight over royalties from minerals produced on U.S. Federal lands and the difficulty the Department of Interior has in collecting those royalties. The issues we address in the charter are widespread and common for mineral-producing regions.

Second objective of the charter is to move the world toward a set of global norms for the management of extractive resources that will guide not only the producing countries but also extractive companies and their home governments in the consuming countries. That was really the first goal of the charter that brought the drafting group together. All of us—which includes a mix of legal experts, tax experts, economists, political scientists—all of us are involved in one way or another in advising governments on extractive policy and working with parliamentarians and with civil society activists.

And we found that we kept getting the same questions from the stakeholders: How should a country maximize its resource rents without driving away investors? What happens when prices fall? How much should we spend? How much should we set aside in a savings fund? What do other countries do? What are the successful models?

So we decided that it would be useful to try to pull together our answers in one concise, but fairly detailed document. We've handed out hard copies. They're also available on the Web site, [www.naturalresourcecharter.org](http://www.naturalresourcecharter.org). But the level threes, which are the detailed policy prescriptions are still being revised, so they are not yet available.

And as you will see on the cover of the hard copy of the charter, it's labeled a draft for consultation. That's because while the group that has been drafting the charter has both broad and deep expertise, we know we don't know it all and there's a wide consultation process underway with industry, with civil society activists, with economists, with the various IFIs that have expertise in this area. And there will be a revision and updating of the charter in the fall based on all these global consultations.

Once we have an updated document, the charter group will make a big push to try to convince individual countries to use the charter as a policy guide. And we are very clear in making the point that to be really successful over the long term, countries can't just

cherry pick one or two features of the charter. You really need to follow best practice in all the elements in each stage of the value chain in order to maximize the long-term economic benefit for the country as a whole.

The second goal for the charter, as I said, is to try to develop and bring acceptance of global norms for extractive resource management. Now, they say this may sound very lofty and a tad unrealistic, but we don't agree. We think it is both highly necessary and doable. As Shelly Han said, there have been dramatic changes in attitudes toward resource governance and industry practices in the last decade. And I'll just give you three examples:

When Tony Blair launched the Extractive Industries Transparency Initiative in 2002, very few companies were interested in the initiative. Civil society said, nah, no country—serious major producing country is going to volunteer or comply with a voluntary initiative. But as we have seen, there are now 32 countries in various stages of implementing EITI—not all of them successfully, to say the least, but there's significant buy-in and more countries are joining every day.

Major oil and mining companies strongly support EITI and are actively engaged in the process now. And that's critically important. EITI has active support, funding and endorsement from the World Bank, the Asian Development Bank, the Inter-American Development Bank—all of the regional IFIs and global IFIs—the IMF and major governments—the United States, Germany, France—there is very strong buy-in.

You can also see that companies themselves are trying to move in the direction of improving their own behavior and practices. Probably the most advanced is the concerted effort by a group of the 17 largest mining companies in the world under the International Council for Mining and Metals, which is developing under the guidance of their CEOs, a sustainable development framework for mining.

And these guidelines are binding on all of the companies that are part of the council. The framework falls short, to be sure, in certain areas, but it is nevertheless a very ambitious undertaking and a very positive one. One wishes that the oil industry would organize itself along the same lines and try to develop some common guidelines.

Finally, I would say the U.S. Congress has really been a leader in the debate on the question of the link between resource governance and resource security—security for major importing countries like the United States. And of course, has been moving—at least introducing—some critical legislation in this area, most notably, S. 1700, the Energy Security through Transparency Act, which has bipartisan sponsorship. And we hope to see a similar bill emerge in the House very shortly.

Now, this bill only addresses one part of the value chain issue—the transparency of payments, but it would cover all of the major internationally active—virtually all of the internationally active mining and oil companies. So it would affect not just U.S. companies but would really help to move toward setting clear rules that build on what has been accepted and has been recognized through EITI and the various voluntary efforts.

So all of this movement is really going in the same direction. And that's why we think that it is—it will be possible with the right diplomatic outreach and activist engagement and congressional encouragement to reach a global norm. And while there's been a lot of progress, there's also I think a very big threat that many of these gains will be reversed as competition that we see already intensifies to control scarce nonrenewable mineral resources.

And not all the players are playing by the same rules. That's very clear. And we could very easily see a race to the bottom again, as the access to supply overrides concerns about proper governance and the long-term damage that abandoning a best practice will produce. So with the help of a prominent oversight board, we will be pushing very hard to have the governance of extractive resources taken up by the G-20, which is becoming the leading forum—international forum for globally important economic issues.

It happens to include all of the major producing countries, both mining and oil, petroleum—the major home base of the extractive industries and the minerals importing countries. So it is an ideal forum in many ways. And we have been talking to member governments about taking up this issue and using the charter as a framework for these discussions.

Now, we're very often asked whether the charter could become an international convention. That would be, I think, pretty far down the road. We don't know if it will become a reality, but what we do know, as Joe said, is that it is a matter of vital and mutual interest for producing countries, for consumers, for investors that there be international norms for management of the nonrenewable minerals resources upon which every modern industrial economy depends. The Commission titled today's briefing, "Natural Resources, A National Responsibility." I would add that this is also an international responsibility. Thank you.

Ms. HAN. Thank you. Now we have our most eco-friendly witness [laughter] joining us, teleconference from Vermont. Dr. Ali, go ahead.

Dr. ALI. Thank you so much. Respected Commissioners, congressional staff, and participants, we are convening this briefing in the shadow of the worst mining disaster to befall our country in 25 years. The failings of government's mechanisms to ensure accountability of natural resource enterprises is painfully evident to the communities in Appalachia. Not only do they exemplify the occupational and environmental hazards of resource extraction, they also show how poverty can persist despite an abundance of resource wealth.

However, my aim here is not to berate resource extraction but to deliberate on how to make resource economies work most effectively for mineral dependent communities. Minerals are undoubtedly an essential ingredient in developing modern economies and consequently a security priority as well.

The mandate of the Helsinki Commission provides an opportunity to consider efforts at reforming governance systems around natural resources at multiple levels. Principle VII of the accords, which led to the establishment of this commission under U.S. law, support the, and I quote, "respect of human rights and fundamental freedom," unquote. This principle coupled with the mandate to promote humanitarian activities as stipulated in Basket III of the accords has collectively led to the application of a so-called "human dimension" to this Commission's activities.

The Commission is thus in an appropriate position to provide the impetus in moving its 55 signatories toward improved governance of natural resources and promoting this vision more broadly at the international level. Two recent initiatives to promote better governance of natural resources deserve our attention today: the Natural Resources Charter and the Extractive Industries Transparency Initiative (EITI).

Neither initiative has followed the usual path of an international convention, but both have merit for greater global accountability if they can be properly implemented. We

have heard in more detail about the specifics of the charter from the distinguished panelists already and so I will focus my comments on some specific strengths and weaknesses of this effort.

The charter aims to provide a broad framework for considering the role of natural resources by outlining 12 precepts and its substantive content is backed by a group of distinguished academics. Each precept has a technical document which is open for public comment and review since October, 2009.

Much of the content in these accompanying documents, which I have reviewed assiduously, aims to exemplify best practices in natural resources management and derive considerable material from already existing material from the World Bank, the International Council on Metals and Mining and the outcomes of the Mining, Minerals and Sustainable Development Initiative (MMSD), which was in itself a long, deliberative process dating back to around 2000 to 2002.

It is thus meant to be a synthesis document and does not appear to have any pretensions of having direct enforcement impacts as already stated. As described by the Revenue Watch Institute, and I quote, “The charter is a rallying point and an advocacy tool to promote natural resource extraction that is conducted ethically and to the benefit of the community,” unquote. Since the charter is not aiming to have treaty status at this time, it could perhaps be a bit more specific in its goals of achieving these objectives since it is less constrained with the imperative of ratification that treaty regimes might be encumbered with.

For example, the precept which grapples with environmental and social aspects of resource extraction could consider novel techniques for valuing ecosystem services that may be impaired by resource extraction in a cost-benefit analysis. The charter also avoids clear guidance on how contentious legal notions, such as free, prior, and informed consent of indigenous people might be obtained and enforced—something which some mining companies are now even willing to consider.

To their credit, the founders of the charter have said that it is a living document which can be independently improved upon and act as a clearinghouse for guidance to governments and companies on best practices. Its independence is thus far guaranteed by a funding base from nonpartisan foundations. And its anchorage in the academy would guarantee that to some degree. I would urge the conveners of the charter to capitalize on this independence and be more specific and bold in their recommendations for improving natural resource governance.

Interestingly enough, the second initiative which I will talk about has its origins with government institutions, but is more specific and bold in its oversight recommendations. Focusing on the precept of transparency, the EITI had its origins in the World Summit on Sustainable Development in 2002 when the British Government launched it. Subsequently, the effort has been embraced by the Norwegian Government, who are now providing about a fifth of the effort’s funding and hosting its secretariat in Oslo.

The EITI aims to get as many countries as possible to join the effort through a system of candidacy and milestones for achieving compliance with its founding principles of revenue transparency. There is also a process of validation which goes beyond the usual concept of an audit and this embraces a far broader view of what we may often refer to as the social license to operate.

The compliance process for EITI is rigorous and is exemplified by the fact that as of April 2010, only two countries have been deemed EITI-compliant. One of these countries is Azerbaijan, which is happily also a member of the Organization for Security and Cooperation in Europe and thus part of the Helsinki process. The other compliant nation-state Liberia is an example of how a country beset by abject violence caused by mineral smuggling can recover within a decade of improved governance.

The challenge for EITI is that it has to seek membership from individual countries with little international clout on its own. Therefore, some of the largest players in the extractive sector—Australia, Canada, the United States, Russia, and China—are not even candidate countries under the EITI thus far. The Helsinki Commission can help to change this by raising the profile of EITI more effectively. Now, this can of course be done for the Natural Resources Charter [sic] as well in terms of encouraging other countries to adhere to its mandate.

The Commission can also play a role in making such legislators within member states pay more attention to revenue flight in countries with which their host corporations and interests engage. With the growing influence of globalization on national policies, some of the fears of resource dependency and its connection to corruption may be assuaged.

For example, consider Equatorial Guinea, which has been under the same ruler since its independence from Spain in 1968. The country has now signed up to be a candidate country within the EITI, partly because of international attention to its governance that was highlighted by its natural resource wealth.

After the discovery of oil in the mid-1990s, the international community became more engaged with this tiny country. The United States reopened its embassy in Malabo in 2003 and the State Department asserts, and I quote, “that the U.S. intervention has resulted in positive developments,” unquote, such as—and as an example, an office to monitor the human rights situation in the country.

The viability, however, of such a mechanism as a means of initiating positive change in Equatorial Guinea was tested by a U.S. Senate hearing and an investigation by the Office of the Comptroller of Currency on siphoning of funds from oil revenues to private banks in 2004. None of this would have happened if the salience of Equatorial Guinea had not been brought to the world’s attention by oil imports which the United States makes from that country and the worthy efforts of civil society groups to bring those issues to light. So trade is probably good as long as it is used with accountability.

The United Nations Security Council undertook a similar effort at vigilance when it convened special panels to investigate the linkage between mineral wealth and the ongoing dreadful conflict in the Democratic Republic of the Congo and in Liberia to some extent. Yet the onus for exerting positive influence once corruption is exposed still lies with the international community, which needs to push for reform through scrutiny of natural resource wealth. Without a unified stance against violations of agreements at the international level, ad hoc accountability arrangements such as those initiated by the World Bank in the case of the Chad-Cameroon pipeline can still fail despite their noble attentions.

In conclusion, I would state that minerals are an important and perhaps essential part of the development path in many countries. However, the international community needs to realize that these resources must be governed with great care and a long-term

planning horizon. Natural resource endowments are an accident of geography and they can certainly be an essential tool for spurring economic activity.

Even though the extraction itself may be nonrenewable timescales, it can be a catalyst for capital flows that can provide for lasting development. Efforts at improving the vigilance of natural resource economies urgently need strengthening and should be considered not only as a humanitarian effort but as a vital security priority. Thank you.

Ms. HAN. Thank you. I'd like to note we have been joined by Congressman McIntyre. Thank you for joining us. Would you like to say something or you want to chime in when you're ready?

Mr. MCINTYRE. We've got so much happening today, I'll be here for a few minutes, but I wanted to come by because our natural resources are such an important responsibility that we all have and that benefit all and should not be the province of just one group or one concern. And so I'm appreciate of the commission holding this hearing and wanted to come by to show my support for having an open dialogue about this and especially thank our panelists who are with us today and our other guests who are represented here. Thank you, ma'am.

Ms. HAN. Thanks for joining us. Before we get into some of the more philosophical questions that the charter raises and those issues and some of the questions I think that Dr. Ali raised in his testimony as well. I'd like to get just a couple of questions of how the charter is actually operating right now and in terms of who is controlling; who actually is the charter right now?

And is there a specific location or is it people spread out? And then what type of support are you getting from the international lending institutions or other groups in terms of incorporating what the charter is doing into their efforts? If you could talk a little bit more about the charter format.

Mr. BELL. This is Karin's bailiwick.

Ms. HAN. OK. [Laughter.]

Ms. LISSAKERS. Well, the charter is, to some degree, a virtual exercise. There is a group of like—I can't even remember how many of us—led by Professor Paul Collier, who is probably the pre-eminent scholar and expert and policy advisor on resources, economic development, and conflict; we have a Nobel laureate; we have an international tax expert from North Carolina, Professor Robert Conrad of Duke University; Joe Bell, who has helped many countries negotiate extractive deals; Michael Ross, who is a political economist and expert on conflict and extractive resources and so on.

So there's the core drafting group, but we have broadened the group that is actively engaged—or we are in the process of doing so—to do two things. One is to have a more diverse and prominent group of champions for the charter, which is an oversight board that is chaired by professor and former President of Mexico, Ernesto Zedillo. Mo Ibrahim, the prominent African entrepreneur and philanthropist is a member of the oversight board.

There are a couple of other people who we are not ready to name yet but who will be joining shortly. And we are also creating a technical expert group to review each of the precepts to make sure that they are really right. And Dr. Ali mentioned some weaknesses in the environmental and social precepts, for example, and we are very conscious, as I said, that there are issues in the number of the precepts, so we want to pull together

more targeted expertise to address those. And that group is still in the process of formation.

We've had a lot of interest from the World Bank because the World Bank has something they're calling—well, the nickname anyway is EITI Plus Plus, which is to move beyond the transparency payments to other issues around the value chain. And the World Bank has been using the charter as a reference point in their discussions on EITI Plus Plus.

We've had a very good response from the United States, U.K. and Australian Governments about raising these issues in the G-20 and possibly using the charter as a framework. We hope to take this forward in discussions with the government of Korea and which will be chairing the fall summit and talking to some people in Canada about it. So it's a matter of building interest. The U.K. Government's development arm is actually funding some of the consultation and dissemination process to build on the contribution we got from the Bill and Melinda Gates Foundation to get the project started. So I think there's a lot of interest.

I think there is recognition of a need to have a broader international dialogue around these issues. And as I say, we think that the framework is a good reference point, precisely because it doesn't have any institutional identity. It's not ideologic [sic]. It's an attempt to compile, as we say, best practice that's been developed by various groups and stakeholders and experts.

Ms. HAN. Thanks. And I'm wondering if we could continue and comment more directly on a couple of things that Dr. Ali mentioned because I think he brings up a point—and I have to confess that I have not read all of level two of the charter. I have looked at it, but I haven't absorbed it at the same degree of specificity as you have. But you know, for example, he does raise the issue of because right now you don't necessarily have the political need to be so broad that so many countries or companies would be associated with it.

So are you working on addressing things like clear guidance on—he named specifically free prior and informed consent—those types of issues, which perhaps now you could afford to be a bit more specific? And is that part of the technical working group that you all are—if you could just address that question, that would be great.

Mr. BELL. Well, it's, as we said, of course it's a work in progress, but there are these various levels. Obviously in one-sentence summaries, you're not going to get in great depth. But you know, just take an issue like free prior and informed consent. It's not a simple issue.

There are many people who have very strong feelings about it, but it's also clear that there are some very complicated issues underlying this in terms of the interests of the citizens—you know, the country as a whole versus the citizens that are in the impacted areas and how those rights ought to be sorted out. And I think in certain instances, the best thing that the charter can do is to point out very carefully what the considerations are that need to be taken into account and thought through. And moreover, particularly in issues such as that, it very much is circumstance-specific.

Obviously, one needs to pay a great deal of attention to indigenous communities and if there is relocation or changes, there is a lot that's already in the charter about how that—what types of things ought to be considered and done if it is undertaken. And that's

the kind of detail, I think, that needs to be elaborated. But certain of these issues don't lend themselves to a very neat black/white universal answer.

Ms. HAN. I'm going to ask another question or maybe two more and then we'll open it up for the audience. One of the things that—this is more of a—also more specific—but how you talk about the difference between the Federal level and the local levels and the idea of, you know, how revenue sharing works or who has control of the resources. And we see that as a big issue in places like Nigeria or even in Canada or the United States or somewhere else [laughter]. How does the charter currently address those types of issues?

Mr. BELL. Of course, Revenue Watch itself is doing a lot of work on revenue sharing and perhaps Karin might want to just say a little bit about that and then I might say a word or two.

Ms. LISSAKERS. Yes, this is a significant issue in many countries—Peru, Indonesia, Nigeria of course for a long time—had decentralized both government decisionmaking and revenue distribution from extraction. So there is a revenue-sharing formula. The charter, I don't believe—it doesn't now and I don't believe it will take a position on what the formula should be.

What is critically important in our view is that whatever sharing be done be completely transparent and that the management of the resources at the sub-national level where governance in previously highly centralized states tends to be extremely weak, that the management of those revenues be transparent and accountable to the communities and the citizens of those regions.

We are working in four countries currently with sub-national projects, working with a Governor in the Niger Delta and with mayors in Peru and in regional governments in Indonesia and in Ghana to create a public monitoring process for the revenue streams that they get from extraction.

I would just make a sort of general point here in response to something Dr. Ali said about how important it is that the international community sort of push countries to do the right thing. That's certainly true, but building political support and pressure in the producing countries, I think, is the most important determinant of whether countries will have successful economic and political management or not. And dealing with the sub-national issues is part of building that process. So the key is accountability, not to an IFI or some external organization, but government accountability to the people themselves, to the citizens themselves.

Mr. BELL. I just say, I mean, like the distribution issue, it is a very complicated issue. Things that on the face may sound appealing may not work. I mean, Peru has this canon which gives a substantial percentage of the revenue directly to the affected municipalities, but this has also led to a situation in which you have a number of resources going into areas that haven't been able to absorb it and then other areas in Peru that are totally bereft of resources and so that you have a great inequality developing in the country in terms of development potential.

And that's the reason I say it's much better to have something that sets out some of the concerns and the things that have to be addressed and how you have to think through it rather than black or white answers. And then second, just underscoring what Karin has said, you have to have a process that's informed and one of the principal issues is to make sure that the information is available to the citizens so that they can partici-

pate in that process and have political resolutions which are consistent with that citizen's desires. Dr. Ali may still want to say something.

Ms. HAN. Yes, Dr. Ali, would you like to chime in at this point on any of those issues?

Dr. ALI. Yes, I certainly appreciate the limitations. And the approach I take is a very pragmatic one. I mean, I'm not one of those sort of activist academics who are just out there to lobby for a particular stance. All I'm saying is you need nuance within the way these issues are presented.

And if you look at an issue like free prior and informed consent, there could be discussion of the jurisprudence around it which exists within national and international law. There is the U.N. Permanent Forum on Indigenous People, which has already been working quite hard on this. I was at a meeting in Manila last year where specifically the issues of extractive industries were being discussed and there were clear guidelines which were being proposed.

So I'm saying we should follow a process absolutely, with care and nuance, but that, you know, it's tempting to also just relegate that to the national governments. The reality in many developing countries is 70–80 percent of the budgets are run by international donors. So the amount of clout there is enormous. And to just play the sovereignty card very easily on that account, I think, is tempting, but will not reach the objectives we are trying to reach.

The other, if we do have precedents in international law in terms of dealing with some of these issues even at a, sort of, this nomenclature of a charter. For example, the energy charter, which eventually became a treaty, is something that maybe the Natural Resources Charter should look into and see, you know, are there some lessons to learn as you evolve this institution further?

Mr. BELL. Let me just say, Dr. Ali, I certainly agree with you that something like the free prior and informed consent we definitely, particularly in the level three discussion, need to point to a great deal of work that has been done on this in the international community and the conventions. And I certainly didn't mean to leave the impression that we were just going to say, well, it concerns a nation to decide it by themselves.

Indeed, the very value of this exercise is to try to provide information to that national process. And so by its very nature, it's not just saying, well, turn this over to the country. Ultimately, these are political decisions that have to be made by the country. Our role here, though, is to try and provide as much information to the citizens and to the governments to inform these decisions as well as we can. And your point about having more exposition on these is very well taken.

Ms. LISSAKERS. I would just say also, I mean, I took your comments on, for example, free prior and informed consent very seriously because it is certainly not the intention of the drafters to go for the lowest common denominator by any means. And if that's where we are on some of these issues—and thus we may well be—that's not where we want to be.

On the, you know, some of the economic issues, for example, we are as a group very critical of the very conservative stance taken by some of the IFIs in advising governments that most of the money should be put away in U.S. treasuries or invested abroad. When you have an acute need and a low level of capitalization in the country and our message is very clearly, first priority should be to spend the money, invest the money at home,

taking account of volatility. So are very open to changes, proposals for changes. And I hope we can continue this discussion. Thank you.

Ms. HAN. A couple of things you all said were very—dovetailed into some questions that I've had myself on this whole process, not just the Natural Resource Charter, but EITI and many of these transparency efforts. Mr. Bell, you raised the issue of national processes and you mentioned the lowest common denominator. And you know, the reality is, a lot of these countries that we're talking about in this conversation range from the barely functioning to the somewhat functioning [laughter] to the pretty solid, but have a lot of issues countries.

And one of the things that we struggle with a lot is, how do you—you know, we've got these standards, and we seem to be holding—particularly in EITI, we're holding these countries and asking them to participate pretty much at equal levels, even though we know that countries are not at equal levels politically, socially, in terms of any of the sort of precursors—the things that they need to have in place to make these things work.

And so how do we address that? You know, sort of the, if they don't have the basics of a civil society, or even a government that has—you know, we were talking about Liberia earlier—if they don't have the basics in place of people in their parliament who can read a law and pass it and know what they're doing and government officials who know—you know, the level. And I know that the international community is working with a lot of governments to up their capacity.

But how do we address that? I mean, or should it not be addressed in these efforts, but maybe in other efforts, and then sort of gradually take these countries to this place? Or do we sort of hold it all back? It's kind of a philosophical question that I've been struggling with. Wondered if you wanted to weigh in.

Mr. BELL. Let's talk about our capacity to—

[Cross talk.]

Ms. LISSAKERS. I mean, the EITI has been struggling with this issue. In fact, just now, today, right now, there's a big debate in the EITI international board about the validation process, because countries, while EITI is a voluntary process, once a country signs on, the rules are pretty strict about what you have to do and when you have to do it. And there's a deadline to have all your processes reviewed—inspected, basically, and reviewed for compliance with the EITI rules.

And a number of countries have not met the deadline for filing their validation reports. Now, is that a matter of lack of capacity, or is it lack of will or—and the rules say that there have to be circumstances beyond the government's control, in order to have an extension. Otherwise, you will be delisted as a number of a countries. And my guess is, when we wake up tomorrow, we will see that several countries—or a number of countries will have been delisted because they didn't meet the deadline.

There are obviously great cases—I mean, Liberia has certainly limited capacity, but it has delivered. It's done a very ambitious EITI process. It's fulfilled the validation, and so on. So that's an example to other countries. But the fact is, that if you work—we work a lot in Sierra Leone, for example—you can see very clearly that at the moment, the capacity of this government in Sierra Leone is much lower than that of even neighboring Liberia, even though they had pretty much the same starting point.

So it's very tricky. The key is capacity building is to have clear rules, clear guidelines, and back that up with capacity building. I mean, the Revenue Watch Institute spends an

enormous amount of effort working with parliamentarians to understand the petroleum and mining law and the issues that will come before them for approval. We work with civil society and with the press in resource-rich countries to try to help them get a better understanding of the issues.

We provide technical assistance to government officials. Joe Bell has done a lot of work in countries. And as part of the charter exercise, since there are a lot of academics involved, as you can see, we're actually creating formal courses around the charter—both the front—the upstream issues of contract negotiation and tax structuring and so on and the macroeconomic issues. So there will be a package of courses, and there's already enormous demand from governments for these kinds of trainings. The World Bank Institute is designing courses around the EITI Plus Plus. So there's certainly growing recognition about the need to give a lot of expert and capacity support.

Mr. BELL. It does seem to me that the charter is useful in two ways. First of all, for governments that do want to try to do a better job, but have capacity limitations or experience limitations, it's a starting point. It's a very—and you know [laughter] it's the first thing that somebody can start, so that, to the extent that it is a useful exercise in providing information to the willing, that's one part of helping with that capacity. The other aspect, of course, is, it's a tool for civil society and for building their education and for them to, frankly, be able to utilize as they organize political constituencies in support of better resource management.

I mean, one of the problems we all know about resources is, exploitation is a very long-term process, and we spend a lot of time in countries where they started out badly, locked themselves into bad deals, and now are trying to clean them up. And hopefully, in processes like this, people can see, up front, these problems and do a better job in doing it. So I think that there are ways that this will interact with these very basic development problems. But obviously, it's just one of many different initiatives and activities that have to take place.

Ms. HAN. Dr. Ali, did you want to say anything on that issue, or—

Dr. ALI. Well, I think most of the issues have been covered. I'm eager to hear what the audience also has, in terms of questions. So I don't want to take their time.

Ms. HAN. Yes, that's where we're going to go now. If there's anyone who has a question, there's a microphone at the end of this dais. If you could come up, state your name, and your affiliation and a brief question, that would be great. Yes.

QUESTIONER. My name is Pat Korovsky. I'm an oil-cursed citizen from an oil-cursed country, representing—

Ms. HAN. Just 1 second. Can you hear, Dr. Ali?

QUESTIONER. My name is Pat Korovsky. I'm an oil-cursed citizen from an oil-cursed country, representing an NGO called Petropolitan, that fights for oil revenue sharing. And I appreciate much all the efforts of EITI, the Resource Charter and all that. But when I [inaudible] that states very clearly, the extractive resources are public assets. And the [inaudible] exploitation are subject to informed public oversight, but places that completely within the realm of the government, I must object. Because I don't see anywhere here the alternative that it would be the citizens managing the revenues or the raw extractive industries.

The USA—the oil is private. It was used in the United States as private. And it's really surprising for me to visualize something here that we are trying to gather support

for oil thugs to control those resources. And there is some things there that we have to try to say, no to. Thanks.

Ms. HAN. Thank you. Mr. Bell or Karin or Dr. Ali? I know, Mr. Bell, you had actually, in your testimony, mentioned something about Anglo-Saxon law tradition on that. [Laughter.] Maybe you want to comment on that?

Mr. BELL. Let's start at the beginning. [Laughter.] You know, some countries do have private ownership of resources. Some countries, like ourselves, have mixed ownership. Obviously, much of the natural resources in the United States are on Federal lands, have been treated as public resources. They have been auctioned off to private developers for payments to the public.

And so they have been managed in a public process, sometimes pretty well and sometimes, perhaps, not so well. So even in the United States, we have a very mixed system. Obviously, if the resource is committed to private ownership, it's in private parties. In most of the civil law countries—in fact, all of them that I'm aware of—underground resources are considered the property of the nation. Usually in the constitution itself, it starts out that as a basic principle.

And you know, we have governments for the purpose, then, of making decisions about how to manage those resources. Now, some governments are good governments; some governments are bad governments. But we can't pretend that they don't exist, and there's no way to take that asset in the ground and suddenly have it in every citizen's pocket. It has to get there, either in the form of cash or in the form of services, through some governmental process. And I don't see how you get beyond that. What we want to do is to get governments to act wisely in that respect, in terms of how they manage that so that the citizens see a long-term benefit.

Ms. HAN. Dr. Ali?

Dr. ALI. Yes, so I think this question goes back to what the level of national identity is for the country in question. So if you have a very strong national identity, there will be more willingness to have a situation where the state has ownership of the minerals. But in cases where—like Nigeria, where the national identity has been fractured since the country came into being, it's going to lead to conflict. And that's why you have the situation where you will want to have some disproportionately, you know, higher level of income going to the place where the oil or mineral is being extracted, in order to quell that level of conflict.

I think you need a hybrid system. You will definitely need to adapt accordingly. Sovereign wealth funds are an important mechanism to do that, in terms of how that can be managed when the wealth comes through. In the U.S., of course, we have the example of Alaska, with a very unique system of how the sovereign wealth fund has been managed, where every citizen of Alaska gets a check. In other places, that may not work out. You may need somewhat of a hybrid mechanism. But I think there is [inaudible, background noise] for us to ponder over.

Ms. HAN. So Karin, do you think it makes a difference, then, in terms of, if you're looking just at it purely from a transparency or anti-corruption standpoint, as to who controls or who has the reins over the resources? You know, if we're talking about local levels, or whatever level, do you think if a government decides to disaggregate this, do you think it would make a difference in terms of the ability to control the corruption or control the transparency?

Ms. LISSAKERS. Well, who controls and what their motivations are certainly make a difference. I mean, we see huge variations from, you know, whether it's, you know, Nigeria or Venezuela or Iran or Russia or the United States. There is a whole line of argumentation that the nature of extractive income to the state, by itself, undermines democracy and accountability because the government is independent of the people. That is to say, whoever controls the government in a country where the resource is, by law, the state property, has an independent source of income and doesn't need to answer to the people through taxation.

Now, some people would argue that the way to solve that is to distribute all of the resource rents to the individual citizens and then tax some portion back to recreate that accountability mechanism. There are others who would argue that, well, if you did that in the case of Nigeria, you know, the resource rent, divided among all the citizens as individual income, would do very little for the citizens and would deplete the government coffers. And not even Alaska distributes all of the rents. But there's certainly, you know, an interesting argument around that issue. And some sharing of the rents with individuals may have—will certainly make citizens pay more attention.

I mean, one of the phenomena we have seen until the EITI mechanism in, let's say, Cameroon, for example—the civil society groups we work with say that in the past, it never occurred to any Cameroonian that they could or should ask what was happening with the oil money because it was all abstract and had nothing to do with them, because they never saw any information; they never had any sense of a control.

Once the EITI numbers came out, there was an empowerment in the sense of feeling they should ask, and say, well, where is the money going? Even the Cameroonian parliament has asked the government, well, why don't we have any money for X, Y, and Z? I mean, it hasn't changed, yet, the economic trajectory or development trajectory of Cameroon, but it has started a process, a dialogue that was completely missing before. So that's why we have so much emphasis on—

Mr. BELL. One other quick anecdote on that: Even in Nigeria, once the Ministry of Finance began to make public the amounts that were actually going to each of the states, there was a much greater demand for public services in those states by the citizens of those states. I mean, transparency doesn't solve everything; that's for sure. But without it, it's practically impossible to get the forces right.

QUESTIONER. Good afternoon, Saleem. My name is Jeffrey Davidson. I'm from Rio Tinto, an international mining company with headquarters in London, U.K., and Melbourne, Australia. I have a process question regarding the Natural Resource Charter. I was at the World Bank in March of last year when Paul Collier announced publicly this initiative. But it's been a largely, kind of, invisible initiative to certain elements of the broad, international community. So people who know about it presumably have participated in it, and some communities of interest know more about it than others.

And other groups that presumably have a relevance and a direct interest don't know a lot about it. So for example, even I got an e-mail not so long ago [laughter.] from people in London saying, has anybody heard about this thing called the Natural Resource Charter? So my question is, you know, I know that on the Web site, you have a mechanism for people to comment; well, who's commented? Who's participated in the discussion? Does it represent—is the discussion representative of the broad community, or have only certain elements participated?

Mr. BELL. Well, Karin can say a lot. In fact, I mean, this is a concern, and one of the issues has been to reach out and try to bring into this discussion. To speak very parochially, the ICMM, which represents the major mining companies, including Rio Tinto, actually has been involved. And Kathryn McPhail, in fact, saw early drafts of this and participated in seminars with the group to discuss these various issues.

Having said that, though, I think it is a very important point. And indeed, Karin and others have been working, with some activity—not depending upon a Web site—but to go out to these various groups and get comments. We've circulated it very specifically to civil society groups that we know are active and interested in these areas and asked for their comments. We have, as I've indicated—there has been involvement with industry groups.

There have been a number of involvements with people in the regional bank and the other international institutions. The World Bank and the IMF have both taken a look at it and written comments. And Karin, you're much closer to the process than I am, but I just—the point's well-taken, but it hasn't been ignored.

Ms. LISSAKERS. No, and I would say—we were talking about capacity constraints—I mean, that's been the issue. We now have a full-time coordinator to organize schedules and develop events and so on. So it's been a bit ad hoc and off-again-on-again, because of the nature of the group that's pulled this together. We will have a much more systematic approach to dissemination and public presentations and so on once we have the full oversight board in place and the full technical advisory committee. But point well-taken, and we're conscious of it, but maybe not as conscious of this shortcoming as we should be. Thanks.

Ms. HAN. Isabelle?

QUESTIONER. Hi, I'm Isabelle Munilla. I'm Director of the Publish What You Pay United States Coalition. I had a three-part question, and it's related to audiences. I think this approach is really interesting, and I think it's really practical. But I was wondering, what does success look like? It's a bit of a three-part question. So from your perspective, for the Natural Resource Charter, what does success look like, in terms of governments? Is it public policy forums to talk about the charter's recommendations? What do you think looks like success from a government's perspective?

And then, from a citizen's perspective, I like that the second section is called the citizen's guide. And I think that's really interesting, to frame it that way. And what would you see as a success from a citizen's standpoint, in relation to the charter? How would citizens use it, and then work with it? And then the third one, selfishly, from the coalition's priorities, what do you see as the U.S. Government's role in working with the Natural Resource Charter in particular, the role of the transparency legislation that's been introduced in the Senate and its ability to influence governments that may be reviewing the precepts within the charter? Thanks.

Ms. LISSAKERS. Well, if you just take some of the transparency features of the charter, what success would look like—that major capital markets, from Hong Kong and Shanghai to Toronto and Melbourne and New York and Frankfurt and London have listing requirements for extractive companies, so that it just becomes the rule that extractive companies need to disclose their payments to governments. We would like to see other elements on cost, production and sales and so on be part of that package.

And an international accounting standard would be even better, and that's something we are working on, or at least, would be complementary. We would like to have govern-

ments—you know, we have these precepts directed at home governments as well. The export credit agencies from all the major capital-exporting countries should have strict rules of compliance for companies and governments that benefit from those—that cover the transparency components, the human rights components, the environmental components.

I mean, the IFC has moved in that direction. The export credit agencies are a bit all over the board. We succeeded in getting legislation for OPIC on the transparency piece, but there should also be a rule for ExIm. The Australian export credit agency is already encouraging countries where they are providing guarantees and funding to implement the EITI.

We don't think there should be a two-track dual standard—one for developing countries and one for resource-rich countries. We think the U.S. should implement the EITI, as Norway has done; Canada should implement the EITI; Australia should implement the EITI. We think that extractive companies should stop insisting on confidentiality clauses in the contracts, except on a very narrow, genuinely commercially sensitive information basis and otherwise accept that, since their counterparties are, to a large extent, governments and you're talking about public assets in those countries, contracts governing the extraction of those public resources should be made public and disclosed to the citizens of the country—citizens who own that resource.

QUESTIONER. Good afternoon, Jeff Goldstein from OSI Washington. One natural resource—not an extractive—that's a source of a lot of tension in certain parts of the world today is water. And I was wondering, do you see any applicability of the terms of the Natural Resource Charter to water, or is the dynamic simply too different?

Mr. BELL. Yes, go ahead, Dr. Ali.

Dr. ALI. Yes, I think that's an excellent question, because ultimately, in terms of scarcity, water is going to be, in terms of human needs, probably the most important parity issue. I think we need to think about water on two levels. There is the dynamic for what one might call [inaudible] or artisanal wells and so on, which would fall under this purview. But a lot of the other kinds of water—recharged aquifers, surface water—there are many other initiatives which we should think about, and using those to move forward on this.

There's a Human Convention on Freshwater Resources which has been under deliberation for several years. They are still 17 countries short to get that moving. So I think there are efforts on the water front, but with the artesian water—that's an area where it has very similar characteristics as non-renewable resources, so it should encompass that.

Mr. BELL. Well, I would point out that there are other resources, such as forest and logging, where much of this would be applicable, that are direct natural resources. Much of this actually could be applicable to certain parts of agriculture. I just read the precepts after you asked the question, and some would be applicable in a water situation, but I think water also sets up a whole set of other issues that are very complicated, very important—I agree with the doctor—less addressed here.

Ms. HAN. Any other questions from the audience, or—OK, David?

QUESTIONER. Good afternoon. My name is David Fu and I work for the Helsinki Commission. I did some of the preparations for this briefing today. And my question is that, for many countries, a truly economically optimal oil policy involves not just domestic

reform, but also relations in corroboration with neighboring bodies. The exports of Central Asian countries, for example, rely heavily on collaborations with Russia or China for their oil and gas pipelines. Should the charter be addressing in further detail the economic impact of resource decisions regarding such international relations?

Ms. HAN. Yes, and I should say, David did a great job in helping prepare for this hearing. So thank you. And part of that question, I think, that has been discussed before is the transport—you know, transparency of transport—of pipelines and et cetera, and so I think it raises a really good question.

Mr. BELL. Well, I think it is an interesting question. I think we always envisioned our targets as being, in a sense, the governments and citizens of those countries, with significant resource wealth, and we've only addressed in two precepts very generally some of the other countries.

There is, of course, that was already referenced here today already by someone, the energy charter, which is, in fact, a convention that's intended to directly address some of these transshipment problems. We're not an adherent to the energy charter. And so it's an interesting question. Frankly, I'd want to reflect on whether there's something useful that we could say about it.

Dr. ALI. On transport, the energy charter is trying to develop a protocol around pipelines, specifically. And my interest there is specifically how that kind of infrastructure can beleaguer cooperation overall, which would tie into the Helsinki Commission's efforts. If you're interested, I have just finished a report for the Brookings Institution on the role of oil and gas pipelines as a source of cooperation, which will be published in a few months. And it grapples with these issues, especially in the Middle East. So stay tuned. [Laughter.]

Ms. HAN. Now, the Revenue Watch Institute has been very actively pushing adding transit revenues to the EITI protocol, and in fact, the government of Ukraine committed, last year, as part of an IMF program, that they would do exactly that. Now, we'll see what happens with the new government, but we think that transit revenues—I mean, if you look at the European context, it's obviously a huge security issue. I was just in Brussels, and that was one of the issues we raised with the Energy Commission and with the Development Commission, and others.

We think it's both a matter of good revenue management to have this transparency, but also as an anti-corruption effort, and you can see all the opaque pipeline and gas deals that were being cut in Central Asia between Central Asia and Europe. And so we think this would be a very significant advance.

Ms. HAN. All right, I want to thank everyone for joining us today. I promised to wrap up by 12:30, so I think we're right on target. I appreciate everyone joining us—our witnesses and our audience—and you can look for a transcript of this briefing on our Web site, probably within the next 24 hours. We'll probably also have a video of the conference as well, so if you'd like to pass it along to others who might be interested, thank you.

Mr. BELL. Thank you.

[Whereupon, at 12:30 p.m., the briefing ended.]

# APPENDICES

## **PREPARED STATEMENT OF JOSEPH C. BELL, PARTNER, HOGAN AND HARTSON, AND CHAIR, ADVISORY BOARD, REVENUE WATCH INSTITUTE**

Mister Chairman, thank you for the invitation to speak to you about the Resource Charter. Natural resources—oil, gas, minerals—have been the source of many conflicts, much corruption, and on occasion great environmental damage. Even today resource competition is fueling conflict in the Eastern Congo, the Nigerian delta and elsewhere. But natural resources also provide an opportunity to support growth and rapid development as Botswana, Norway and indeed our own experience have shown.

The Resource Charter is one tool in the effort to support governments and societies in the positive use of their natural resources. My colleague Karin Lissakers, the Executive Director of the Revenue Watch Institute, will explain to the Commission how the Charter was developed, its current status, and how it fits in with other international initiatives. In my statement I will touch upon the basic substantive principles incorporated into the Charter. The full document is being submitted for the record.

Resource management can be a particular challenge for developing countries having weaker institutions and limited human resources and where such resources can bulk large in government revenue. But success is possible, and that success is not only a benefit to the country but also to the international community in reducing conflict, eliminating poverty, and in general producing a more prosperous and stable world.

The Charter enhances the likelihood of success by drawing together what we now know about the wise development of natural resources and to provide that information in a useful format to governments and societies in resource rich countries. The Charter is organized around twelve principles or precepts. The first ten precepts or principles are directed to the countries which have significant natural resource endowments and the last two are directed to the extraction companies, home governments and international capital centers.

To facilitate the Charter's use it is also elaborated at three different levels. Level one states the twelve precepts in single sentence summaries. Each principle is then elaborated in a short policy summary, the level 2. The third level sets out in some detail the learning we have with respect to each principle, including references to other work, and listing issues that must be confronted and pointing to successful experience. I should emphasize that this is still a work in progress and as I speak the effort continues to be informed by comments by policy makers and experts from developing countries and elsewhere.

Under the Extractive Industries Transparency Initiative (EITI), the best know international effort to date, there has been much focus on one important aspect of resource development—the transparency of payments to the government. The Resource Charter reinforces the EITI, particularly with respect to the importance of transparency, but the Charter also goes beyond EITI by looking to the entire value chain from the decision to develop (or not), the development process itself, and very importantly how best to use the resulting revenues.

Outside the Anglo-Saxon legal tradition, natural resources are the property of the nation and the principles begin with the basic notion that they should be used to secure the maximum benefit for the citizens of the host country. The implementation of this

simply stated and unexceptional idea is in fact not easy and requires many difficult decisions. Oil, gas, and mining projects are technologically complex and capital intensive, usually have long investment lives, and are affected by highly volatile commodity markets. Moreover, they can if improperly managed impose heavy social and environmental costs. Getting these decisions right in any country requires good processes, good technical knowledge and in the end good judgment.

A number of the precepts involve the technical issues of resource management. What is the role of competition and how can it help make better decisions and maximize value (Precept 3)? What are the options for the fiscal regime (Precept 4)? What basic principles should guide state owned companies (Precept 5)? What are the social and environmental risks that must be accounted for and how can they be mitigated (Precept 6)? These tools emphasize the use of competition to maximize value to the country and the adoption of fiscal regimes that have flexibility to adjust to changing economic and social conditions over the long periods typically required for resource extraction.

Certain of the precepts deal with process, especially the importance of transparency and public involvement in resource use (Precept 2). The history of resource exploitation is filled with much bad history of secret dealings and private enrichment. The Charter emphasizes that these resources are public assets. Citizens have not only a right to information about their development, but such information is a basic element in getting policies correct and in building constituencies that will support such policies over the long term.

On the expenditure side, the Charter holds that resource revenues should be principally devoted to promoting sustained economic growth. Resource development should be integrated with the country's long term development plan, and the additional revenues should be used to accelerate movement along that plan.

This may seem an obvious conclusion, but there has been much debate about how much of natural resource revenue should be saved and how much spent currently and on what. Some have argued that revenues should be deposited in some sort of "future generations" fund with the only the interest being spent to support the budget. While appealing on its face, in fact the returns to investment in social and physical infrastructure within the country should in most cases be much higher than the returns available on internationally held funds, even more so when one considers the vulnerability of such funds to future "raiding." Particularly for poorer countries—but also for countries such as our own—it is this internal investment that sets the foundation for prolonged and significant economic growth, a process which increases the welfare of both current and future generations.

The Charter's value lies in providing wise advice based on experience as to how a country should go about this critical process of converting a country's wealth in the ground to permanent wealth for its citizens. We are all beneficiaries when countries are successful in this task.

## **PREPARED STATEMENT OF KARIN LISSAKERS, DIRECTOR, REVENUE WATCH INSTITUTE**

Chairman, Members of the Helsinki Commission,

I thank you for the opportunity to talk to you about the Natural Resource Charter—an effort by an independent group of experts to create a road map for countries to manage their mineral resources for the long term economic benefit of their people.

The Revenue Watch Institute is an independent, not for profit organization dedicated to promoting effective, transparent and accountable management of mineral resources in resource rich countries. My team and I have participated in the creation of the Resource Charter and are involved in its dissemination.

My colleague Mr. Joe Bell has summarized the principle elements of the Charter. I would like to tell you a bit about what is being done with the Charter and how it can evolve as an instrument for national and international policy.

The goals of the Charter group are two-fold. The first is to provide a practical guide for policy makers in resource rich countries, particularly developing countries, who struggle with the complexities of managing valuable, finite, capital-intensive mineral resources well and meeting the challenges of highly volatile revenue streams that these will generate. Of course, as we have seen in the United States with the fight over royalties for mineral production on US federal lands and the difficulty the Interior Department has in collecting them, these challenges are not limited to poor developing countries.

The second objective for the Charter is to move the world toward a set of global norms for the management of extractive resources that will guide not only producing countries but also extractive companies and their home governments.

The first goal helped bring the Charter group together. All of us involved in drafting the Charter are actively working in resource rich countries, with governments, with parliaments, with civil society activists. One of the principal motivations for writing the Charter was that we found we kept getting many of the same questions from officials we were helping: How do we maximize our share of resource rents without driving away investors? What happens when prices fall? How much should we spend, how much to set aside in a fund? What do other countries do? What are the successful models? We decided that it would be useful to pull together the answers, the best wisdom and experience in one place, one document.

Professor Paul Collier is perhaps the preeminent scholar on the relationship between mineral wealth, development and conflict and advises governments the world over as well as international institutions like the World Bank. The idea of a Charter is his. Nobel laureate Michael Spence led the Commission on Growth and Development,<sup>1</sup> that found the key distinction between fast growing developing countries and slow growing developing countries was the huge difference in capital investment rates. If well managed, mineral resources in periods of high prices should generate ample revenues for producers to greatly increase their capital investment in the non-minerals sector, including investing in human capital. On the other hand, tax expert Robert Conrad and Joe Bell have worked in countries from Mongolia to Liberia where decades of large scale mineral exports have

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<sup>1</sup> Commission on Growth and Development: The Growth Report: Strategies for Sustained Growth and Inclusive Development. Washington, D.C.: World Bank 2008

yielded limited or no revenue for the state, and have failed to provide jobs or technical skills transfers. The Charter seeks to help countries rectify that imbalance.

You will note that the Charter is still a “draft for consultation.” While the authors of the Charter among them have both broad and deep expertise on the issues the Charter addresses, we do not think we know it all. The authors have laid out a clear set of guiding principles, but have also tried to pull together state of the art guidance from multiple sources including government practitioners, industry, international financial institutions like the World Bank and IMF, academics, NGOs. We want to be sure we have it right, so the Charter is being put through a series of consultations at various fora around the world, from the annual meetings of the Asian Development Bank and the EBRD to the African Union meeting of heads of state, discussions with the International Council for Mines and Metals, major petroleum companies, the Publish What You Pay international conference, meetings of development economists. There will be a conference in Oxford this fall to discuss and revise the Charter based on the consultation results. A grant from the Bill and Melinda Gates Foundation has supported the first stage of work on the Charter; the UK government’s DFID is funding the consultation and dissemination stages.

Once the Charter has been revised following consultations, there will be a concerted effort to have individual governments consider adopting the Charter as an overall policy guide for their resource sectors.

The second goal for the Charter, creating global norms for extractive resource management, may seem lofty and a tad unrealistic. We don’t agree. We see it as both as highly necessary and as doable. There have been dramatic changes in attitudes toward resource governance and industry practices in past decade. To give just three examples. When UK Prime Minister Tony Blair launched the Extractive Industries Transparency Initiative to make company payments and government receipts from extraction public, few companies were interested and civil society doubted that any governments would sign on to a voluntary scheme. Eight years later, 32 countries, more than half the resource rich countries in the world, have signed on and are in various stages of issuing payment and revenue reports. Many of these candidate countries have fallen short of EITI’s schedule and requirements, but this is still significant progress. The major Western oil and mining companies now support EITI. All of the major international financial institutions including most recently the Asian Development Bank have endorsed EITI.

In the mining sector, the CEOs of the seventeen largest companies have banded together in the International Council on Mining and Metals (ICMM) to develop binding guidelines for their members to promote sustainable mining practices, including transparency, that will benefit the source countries as well as the companies and their shareholders. While their Sustainable Development Framework falls short in some regards, it is encouraging that the leaders of these important companies recognize that responsible practices are good for the bottom line.

The U.S. Congress has led the US debate on the link between resource governance and energy security. As reflected by the bi-partisan sponsorship of S1700 the Energy Security Through Transparency Act (S1700), there is growing recognition that these cannot be separated. We look forward to passage of this important bill through both the Senate and the House this session. This legislation is fully supportive of and consistent with the principles and purposes of the Natural Resource Charter. I was recently in Brussels and I can tell you that the European Parliament and EU Commissioners are following these developments with great interest.

While these developments are very encouraging, we still live in a multi-track world where resource policies are concerned. There is a very serious risk that as competition to control access to resources intensifies with the global economic recovery, voluntary good practices will go out the window. (One of the reasons a legal listing requirement is important.) We need common standards and global acceptance of core principles and practices, otherwise we are likely to see a race to the bottom again. To make sure that progress continues, we are promoting the Charter as a framework for a global dialogue on sustainable resource policies and practices. It has guidelines not only for producing countries, but also for the extractive industries and for the consuming and investing countries and their governments.

With the help of the Charter Oversight Board chaired by former Mexican President Ernesto Zedillo and including African philanthropist and entrepreneur Mo Ibrahim, we are campaigning to have resource management issues taken up by the G20 later this year or next. The G20 is becoming the premiere forum for discussing and taking concrete actions on economic issues of global importance, which resource management certainly is. It also happens to include the most important minerals producing, importing and investing countries. Successful mining and oil countries like South Africa and Brazil can be engaged and encouraged to exercise important leadership on these issues. China, Korea and India must be brought into the dialogue as their governments and companies are increasingly important in the extractive sectors around the world. They are leading members of the G20, and Seoul will host the November summit.

It is possible that the Natural Resource Charter could eventually become a formal international convention, with signatories and an adherence mechanism under the United Nations or some other inter-governmental organization. We do not know if that will become a reality. What we do know is that it is a matter of vital, mutual interest for producing countries, consumers and investors that there be international norms for the management of the non-renewable mineral resources upon which all modern industrial economies depend.

The Commission titled today's briefing "Natural Resources, a National Responsibility". I would add that it is also an International Responsibility.

## **PREPARED STATEMENT OF SALEEM ALI, ASSOCIATE PROFESSOR OF ENVIRONMENTAL STUDIES, UNIVERSITY OF VERMONT**

Respected Commissioners, congressional staff and participants, we are convening this Briefing in the shadow of the worst mining disaster to befall our country in twenty five years. The salience of governance mechanisms to ensure accountability of natural resource enterprises is painfully evident to the communities in Appalachia. Not only do they exemplify the occupational and environmental hazards of resource extraction, they also show how poverty can persist despite an abundance of resource wealth. However, my aim here is not to berate resource extraction but to deliberate on how to make resource economies work most effectively for mineral-dependent communities. Minerals are undoubtedly an essential ingredient in developing modern economies and consequently a security priority as well.

The mandate of the Helsinki Commission provides an opportunity to consider efforts at reforming governance systems around natural resource extraction at multiple levels. Principle VII of the accords which led to the establishment of this commission under U.S. law, support the “respect of human rights and fundamental freedom.” This principle coupled with the mandate to “promote humanitarian activities” as stipulated in Basket III of the accords has collectively led to the application of a so-called “human dimension” to this commission’s activities. The Commission is thus in an appropriate position to provide the impetus in moving its 55 signatories towards improved governance of natural resources and promoting this vision more broadly at the international level.

Two recent initiatives to promote better governance of natural resources deserve our attention today: The Natural Resources Charter and The Extractive Industries Transparency Initiative. Neither initiative has followed the usual path of an international convention but both have merit for greater global accountability if they can be properly implemented. We will hear in more detail about the specifics of the Natural Resource Charter from two members of its technical group and so I will focus my comments on some specific strengths and weaknesses of this effort. The Charter aims to provide a broad framework for considering the role of natural resources in development by outlining twelve precepts and its substantive content is backed by a group of distinguished academics. Each precept has a technical document which has been open for public review since October 2009. Much of the content in the accompanying documents aims to exemplify best practices in natural resources management and derives considerable material from already existing documents from the World Bank, The International Council on Metals and Mining and the Mining, Minerals and Sustainable Development Initiative (MMSD). It is thus meant to be a synthesis document and does not appear to have any pretensions of having direct enforcement impact. As described by the Revenue Watch Institute, the charter is “a rallying point and an advocacy tool to promote natural resource extraction that is conducted ethically and to the benefit of the community.” Since the charter is not aiming to have treaty status, it could perhaps be a bit more specific in its goals of achieving these objectives, since it is less constrained with the imperative for ratification that treaty regimes might be encumbered with. For example, the precept which grapples with environmental and social aspects of resource extraction could consider novel techniques for valuing ecosystem services that may be impaired by resource extraction in a cost benefit analysis. The charter also avoids clear guidance on how

contentious legal notions such as “free prior and informed consent” of indigenous people might be obtained and enforced.

To their credit, the founders of the Charter have said that it is a “living document” which can be indefinitely improved upon and act as a clearinghouse for guidance to governments and companies on “best practices” in natural resource governance. Its independence is thus far guaranteed by a funding base from nonpartisan Foundations and its anchorage in academe. I would urge the conveners of the charter to capitalize on this independence and be more specific and bold in their recommendations for improving natural resource governance.

Interestingly enough, the second initiative which I will talk about has its origins with government institutions but is more specific and bold in its oversight recommendations. Focusing on the precept of transparency, the extractive Industries Transparency Initiative had its origins in the World Summit on Sustainable Development when former British Prime Minister Tony Blair announced its launch. Subsequently, the effort has been embraced by the Norwegian government who are now providing about a fifth of the efforts funding and hosting its secretariat in Oslo. The EITI aims to get as many countries as possible to join the effort through a system of candidacy and milestones for achieving “compliance” with its founding principles of revenue transparency. There is also a process of validation which goes beyond the usual concept of an “audit” and embraces a far broader view of what we often refer to as the “social license to operate.” The compliance process for EITI is rigorous which is exemplified by the fact that as of April 2010, only two countries have been deemed EITI compliant. One of these countries, Azerbaijan is happily also a member of the Organization for Security and Cooperation in Europe. The other compliant nation-state, Liberia is an example of how a country beset by abject violence caused by mineral smuggling can recover within a decade of improved governance. The challenge for EITI is that it has to seek membership from individual countries with little international clout on its own. Therefore, some of the largest players in the extractive sector, Australia, Canada, the United States, Russia and China are not even candidate countries under the EITI thus far. The Helsinki Commission can help to change this by raising the profile of EITI and effectively branding the process just as it can help with branding The Natural Resources Charter.

The Commission can also play a role in making sure legislatures within member states are paying attention to revenue flight in countries with which their host corporations and interests engage. With the growing influence of globalization on national policies, some of the fears of resource dependency and its connection to corruption may be assuaged. For example, consider Equatorial Guinea, which has been a under the same ruler since its independence from Spain in 1968. The country has now signed up to be a candidate country with EITI, partly because of international attention to its governance that was highlighted by its natural resource wealth. After the discovery of oil in the mid-1990s, the international community became more engaged with this tiny country. The United States reopened its embassy in Malabo in 2003, and the State department asserts that U.S. “intervention has resulted in positive developments,” such as an office to monitor the human rights situation in the country. The viability of such a mechanism as a means of initiating change in Equatorial Guinea was tested by a U.S. Senate hearing and an investigation by the Office of the Comptroller of Currency on siphoning of funds from oil revenues to private bank accounts in 2004. None of this would have happened if the salience of Equatorial Guinea had not been brought to the world’s attention by oil imports

which the US makes from that country and the worthy efforts of civil society groups. So trade is probably good as long as it is used with accountability.

The United Nations Security Council undertook a similar effort at vigilance when it convened special panels to investigate the linkage between mineral extraction and conflict in the Democratic Republic of the Congo and in Liberia to a limited extent. Yet the onus for exerting positive influence once corruption is exposed still lies with the international community, which needs to push for reform through scrutiny of natural resource wealth. Without a unified stance against violations of agreements at the international level, ad hoc accountability arrangements such as those instituted by the World Bank in the case of the Chad-Cameroon pipeline, can still fail, despite their noble intentions.

In conclusion, I would state that minerals are an important, and perhaps essential, part of the development path in many economies. However, the international community needs to realize that these resources must be governed with great care and a long-term planning horizon. Some key points to consider in this regard include:

- The full range of livelihoods that may be available to the community for capital generation based on the area's ecology and geographic constraints. The opportunity costs of various prospects need to be compared with community consultation through deliberative processes. Principles of free prior and informed consent can be effectively implemented through mechanisms such as referenda that are preceded by a detailed educational program from nonpartisan institutions.

- The processes that will be used for extraction and whether ecological restoration would be possible afterwards. This is especially important for nonrenewable resources so that communities can still use the land productively after extraction is finished. Ecosystem service valuation techniques and metrics from industrial ecology such as life cycle analysis may be helpful in comparing product economies derived from these resources.

- The establishments of trust funds and other revenue management systems by donors and corporations. In the nascent paradigm of "corporate social responsibility", it is not enough to shift the blame to the government but rather to ensure that the funds are appropriately managed. International institutions, such as EITI need to be strengthened to ensure that state sovereignty is not used to trump effective revenue management regimes.

- Some level of state ownership to ensure appropriate wealth transfer to local populations may be advisable but not as a blanket exercise in protectionism. Foreign capital and partnership with multinationals usually have an important role to play earlier on in the exploration and development cycle but eventually, as institutions develop, some level of state ownership is usually beneficial to protect the interests of local populations.

- Communities that bear the impact of extraction must be the first to reap the rewards. If wealth is being extracted from one region of the country, the development plan must give preference to that region in terms of poverty alleviation even if demographic indicators may suggest giving preference to other more populous part of the country. This can avoid regional conflicts such as those observed in the Niger Delta region of Nigeria or in the Baluchistan region of Pakistan.

- The speed of mineral extraction must be calibrated with the capacity to manage the revenues effectively and to restore the land that has already been mined. Mineral resources, in particular, are fixed stocks whose value can only increase with scarcity in the future. Hence a rush to extract is not justifiable unless ecological constraints of impact

and revenue management are ensured or if there is an imminent development imperative that cannot be met by other economic activities.

Natural resource endowments are an accident of geography, and they can certainly be an essential tool for spurring economic activity. Even though the extraction itself may be nonrenewable on human timescales, it can be a catalyst for capital flows that can provide for lasting development. Efforts at improving the vigilance of natural resource economies urgently need strengthening and should be considered not only as a humanitarian effort but as a vital security priority.









This is an official publication of the **Commission on Security and Cooperation in Europe**.



This publication is intended to document developments and trends in participating States of the Organization for Security and Cooperation in Europe (OSCE).



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