

Congressional Briefing on “Natural Resources: A National Responsibility” organized by the Commission on Security and Cooperation in Europe (The Helsinki Commission)

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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.

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