

U.S. Helsinki Commission
Commission Hearing on “The Link between Revenue Transparency
and Human Rights”
April 22, 2010
Testimony of Max Bokayev, NGO Arlan, Kazakhstan

I would like to thank the members of the U.S. Helsinki Commission for their invitation to testify at this hearing, which covers an issue of critical importance to Kazakhstan. I hope to give you a perspective on the real challenges being faced on the ground in a country where extractive industries plays such an important role.

My name is Max Bokayev. Today I will share with you my views from my experience as Chairman of a Kazakh non-governmental organization (NGO), and as regional coordinator for a national NGO coalition focused on oil revenue transparency. I will also share my views based on my experience as the project leader of an EITI Roundtable process organized in 2005, with the participation of members of parliament of the Republic of Kazakhstan.

Since 2003, I have been the Chairman of the non-governmental organization, Arlan, based in Atyrau, the largest oil producing region of Kazakhstan. We help citizens affected by extractive industries projects to protect their rights to participation, access to information and access to justice, which, as you know, are enshrined in the Aarhus Convention. We also work with citizens groups to conduct advocacy to improve the transparency of oil revenues, as well as the environmental and social performance of specific oil production projects.

As you may know, oil is a central part of the Kazakhstan economy. [In 2006, oil revenues comprised roughly 38% of total government revenues, and represented roughly 11% of GDP.] Kazakhstan is the second largest oil producer of the former Soviet republics, and is home to some of the most important oil and gas fields in the world. Most of the largest oil companies in the world operate in Kazakhstan, such as Chevron, ExxonMobil, ConocoPhillips, Shell, Total and others. For example, the Kashagan field, which is the largest known oil field outside the Middle East and the fifth largest in the world in terms of reserves, is located off the northern shore of the Caspian Sea, near my home city of Atyrau. A series of complex pipeline projects with significant environmental and social risks, such as the BTC Pipeline project, connects these fields to markets.

As a result of the massive scale of oil development, modern Kazakhstan is facing all the political and the economic problems that are typical to developing countries rich in natural resources. The warnings of economists, sociologists and political analysts made to the leaders of Kazakhstan in the early and mid-nineties - has now become our reality.

We are seeing significant evidence of the so-called “resource curse”. The lack of transparency in the governance of the oil sector has facilitated rampant corruption in the bidding and contracting process, allowing corrupt public officials to launder millions of dollars of public funds; public funds that could be used to provide social services and economic development opportunities.

Some of you may know the scandal called “Kazahkgate”. The criminal case names the Kazakhstan president Mr. Nazarbayev as an unindicted co-conspirator. The defendant, James Giffen, a consultant to the Kazakh government, is accused of channeling more than \$78 million in bribes to Mr. Nazarbayev and the head of the

country's oil ministry. The money, doled out by American companies seeking access to Kazakhstan's vast oil reserves.

Kazakhstan officials said that the charges have nothing to do with their president as they concern an American citizen; though several American attorneys addressed the US Department of Justice on behalf of Kazakhstan. They requested to stop the proceedings taking into account the strategic importance of US relations with Kazakhstan.

In response to allegations of corruption by companies, the state control bodies will be indifferent unless specific state interests arise. In these cases, the state uses various pressing methods starting with sponsorship extortion and ending with complete overhaul of contracts.

It is no surprise that the Transparency International Corruption Perception Index gives Kazakhstan a score of 2.7 out of a possible 10, signaling that the public believes that public officials are corrupt.

Against this backdrop, the human rights situation in the Republic of Kazakhstan has dramatically worsened. Such basic human rights as access to water, to clean air, and to labor rights remain problematic. For example, in Atyrau, Kazakhstan's biggest oil region and where I am from, 17 % population does not have any access to drinking water. The infant mortality rate in this region is higher than the national average of 20.8. For comparison, in developed countries, the infant mortality is below 6. In Mangystau, another big oil region, the rural poverty rate is 63.5 %.

The government has been working diligently to repress independent media and human rights activism. Many journalists and others working to hold the government to account for its mismanagement and laundering of public revenues, have been met with harassment, intimidation and violence. Newspapers and journalists have been charged with libel for writing about the corrupt actions of politicians, and individuals from the media or human rights groups have been anonymously assaulted or their lives destroyed. The government amended Kazakhstan's media law to give itself unlimited power to shut down independent and opposition media outlets for technical violations. It also created registration procedures for new media outlets that were highly difficult to meet.

Exacerbating this situation is that in the more than 20 years of my country's independence, there has been a lack of basic, established democratic institutions. The elections conducted during the entire period of the independence have never met the standards of the OSCE. The current single-party parliament is deprived of its necessary control and regulatory functions. For example, opposition politicians do not have access to mass media.

Given this context, it is not surprising that the government's commitment to implement EITI under the Memorandum of Understanding back in 2005 was received by civil society with great hope and enthusiasm. I worked closely with the NGO Coalition called "Oil Revenues – Under Public Oversight!" to push for EITI implementation. Even fractional improvement in the transparency of state revenues could have contributed to more effective governance and to the establishment of a relationship of trust between the government, companies and civil society.

The implementation of EITI is overseen by the multistakeholder group, the National Stakeholders Council on EITI. The Council is chaired by the Vice Minister of Energy. Civil

society is represented in the Council by the Coalition “Oil Revenues – Under Public Oversight”. This coalition holds all three civil society seats on the Council and actively participates in the Council’s work. So far, Kazakhstan has produced 2 EITI reports and is expecting to produce 2 more reports in 2010. The EITI reports produced by Kazakhstan are all aggregated, so there is NO company-by-company payment data, however, they cover almost all kinds of payments made by extractive companies to the government.

While the validation results indicate progress achieved by Kazakhstan in implementing EITI, they also highlight issues which stakeholders will need to address.

Kazakhstan is amongst 16 countries which were granted the extension of the validation period by the EITI board. Companies and NGOs have different perception of the meeting validation criteria. While NGOs are saying that a glass is half empty, the companies argue that it is half full, saying that Kazakhstan’s strong commitment to EITI is clearly evident. We take this extension with responsibility to meet validation criteria within 6 months. Only 122 companies out of 700 are covered by the EITI, not all material payments are covered by reporting, the companies’ reports not always are audited in accordance with the international standards. The detailed Working Plan is not published. We hope that in 6 months all validation criteria will be met without any exceptions.

However even after five years, it is still impossible to say unambiguously that the transparency of payments has translated into concrete improvements and that it has made an impact on the positive development of civil society and human rights.

On the one hand, these five years of implementation of the EITI again proved that transparency in the extractive industries starts with transparency in the administrative, legal and judicial systems of the state. It also became clear that the EITI is both good and effective only if there are effective democratic institutions. Under the authoritarian regime (even under the so-called "soft" authoritarianism of president Nazarbayev), with excessive dominance of big extractive companies in the economy and given weak civil society, the role of the EITI is reduced to issuing of usual ritual accounts.

But on the other hand, despite all the difficulties – the EITI National multi-stakeholder group is the only place where representatives of independent NGOs can delegate their representatives. And this right is given to them by the EITI.

Being aware of the limited mandate of the EITI, the Kazakhstan civil society activists raised the question of expanding the mandate even before the signing of the EITI MoU. But whenever NGOs suggest going beyond the formal requirements of the EITI and considering the transparency in a broader sense, representatives of extractive companies and the state officials say in one voice: this is not within the mandate of the EITI.

Like many other representatives of civil society of Kazakhstan I strongly believe: It is necessary to further deepen and widen the EITI, in particular my recommendations would be to:

- Achieve that the government and extractive companies acknowledge the mandatory publication of detailed, disaggregated EITI reports
- Achieve transparency of information on social investment projects (on strategic philanthropy) of extractive companies
- Obtain transparency of contracts for subsurface use and strengthening the role of the state

representative bodies and civil society in the management of revenues from extractive industries

However, despite good intentions, governments assuming EITI obligations will face challenges and it will take political will to work through those challenges. It is in this context, that the leadership and support of developed countries is needed. For example, the current prime minister of Kazakhstan, having learned that only a couple of developing countries in EITI disaggregate revenue payment data, proposed to introduce data disaggregation in Kazakhstan only after its introduction in Norway. The signals sent by developed countries have great influence and appeal to government officials in developing countries.

So, taking this opportunity, I would like to urge U.S. lawmakers to pass the Energy Security Through Transparency Act in your Senate. With this legislation, the United States will set a standard for revenue payment transparency in the extractive sector as well as its support to EITI. This will, in turn, help to strengthen the position of civil society throughout the world, particularly in Kazakhstan.

In closing, I would like to say that in the Republic of Kazakhstan, as well as in many other countries, the subsurface has been declared to be the property of the people. If we also consider, that the subsoil is the property of not only the present generation but of future generations, it becomes clear that the sustainable management of revenues from these subsoil resources is a protection of the human rights of future generations.

In my opinion, this is the argument that demonstrates the link between revenue transparency and human rights.

Thank you for your work to understand and improve transparency mechanisms, so that we can, together, ensure the real participation of citizens in the equitable distribution and use of resource revenues, and in the management of these revenues to protect the human rights of future generations.

Thank you.
