

U.S. Helsinki Commission
Commission Hearing on
“The Link between Revenue Transparency and Human Rights”
April 22, 2010

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Chairman, Members of the Commission,

I thank you for the opportunity to talk to you about the link between natural resource revenue transparency and human rights.

The Revenue Watch Institute is a non-profit policy institute and grantmaking organization that promotes the responsible management of oil, gas and mineral resources in resource-rich countries. We have been involved in the Extractive Industries Transparency Initiative (EITI) since its inception and I am currently a member of its International Board.

I would like to talk to you about three issues relating to the subject of today’s hearings: first, how revenue transparency and human rights are connected; second, the record of resource rich countries on adherence to human rights; and third, the work of EITI in dealing with questions of rights and democracy. I will conclude with some policy recommendations for your consideration.

Revenue Transparency and the Need for Rights

There is now a substantial consensus that natural resource revenues must be transparent. There are several reasons for this: first, energy security, as consuming countries increasingly view transparency as a way of minimizing uncertainty about supplies. Second, in the current economic downturn transparency is seen as helping to price risk more accurately. Third, transparency is seen as a way to foster better development outcomes. Finally, and for some, most importantly, transparency is viewed as an important weapon in combating corruption.

Countries with non-renewable natural resource wealth face special opportunities and special challenges. If used well, these resources can create greater prosperity for current and future generations; if used poorly, they can cause economic instability, social conflict and lasting environmental damage. The transparent, accountable and effective management of non-renewable resources can be an engine for economic growth, promote the welfare of the population in general and be environmentally sustainable. And most importantly, where corruption and mismanagement are present in such economies there are often human rights abuses.

Revenue transparency can only be meaningful in a society that respects basic rights. Basic rights enable the public to learn and discuss the facts about how their society is governed, to air this information in the media, and to have recourse to elections. Among other institutions, revenue transparency needs good NGO laws, an independent judiciary, a strong parliament capable of playing its oversight role as well as a free and independent media.

There are two significant areas where revenue transparency and human rights interact: first, with respect to the rights of civil society advocates and organizations to promote transparency and accountability. Advocates of transparency face politically motivated harassment. EITI has confronted cases in several countries – including Niger, the Republic of the Congo, and Gabon. Some of these are described in more detail in the testimony submitted today by Oxfam America. We share their concerns.

The second link between revenue transparency and rights is the question of what political arrangements and basic freedoms are necessary for transparency mechanisms to be meaningful. Do you need basic democracy and human rights first? It may seem obvious, but corrupt resource rich countries do not sign up to conventions or protect rights very well.

Resource Rich Countries and Ratification of Human Rights and Governance Instruments

I have appended a table showing the status of countries participating in the Extractive Industries Transparency Initiative, including those which recently lost their candidate status. The table shows that many of the EITI countries have committed to international human rights instruments. But the performance in human rights protection of many of these countries is poor. The table also shows a high number of these countries have failed to sign up to important instruments, such as the Optional Protocol to the Convention Against Torture & Other Cruel Inhuman or Degrading Treatment or Punishment and the Convention for the Protection of All Persons from Enforced Disappearance. A number of countries have failed to ratify the UN Convention Against Corruption.

Resource-rich countries also lag in the area of freedom of information. Worldwide there has been dramatic progress made by campaigners for freedom of information. 82 countries have adopted freedom of information laws; in fact just this week Pakistan adopted a constitutional amendment guaranteeing a citizen's basic right to information. The broad international advance of this issue is a cause for celebration. But of the countries in the EITI only 6 of 34 have a law providing access to information: Albania, Azerbaijan, Kazakhstan, Kyrgyzstan, Norway and Peru. Further research along these lines looking at ratifications and performance of other indicators is needed.

The responsibility for change lies not only with the countries themselves. Oil, gas and mineral wealth insulates countries from international criticism. In a perceptive article in *Foreign Affairs* Aryeh Neier identified the inconsistency in applying human rights norms, calling this a “new double standard.” In short: human rights abuses in countries with geopolitical or economic significance receive less criticism than countries without the same trade, energy or strategic significance. Major resource exporting countries have strategic significance to consumers, and may thus get a pass where human rights abuses are concerned.¹ A shared concern for good governance, built on a shared expectation of human rights, is reflected in new transparency mechanisms such as the Extractive Industries Transparency Initiative.

The Extractive Industries Transparency Initiative (EITI) and Civil Society

¹ Aryeh Neier, “The New Double Standard,” *Foreign Policy*, No. 105 (Winter, 1996-1997), pp. 91-102.

The Extractive Industries Transparency Initiative, created in 2003, is the global standard for companies to disclose their payments to governments and for governments to state their receipts. In each country EITI is run by government and supervised by a multistakeholder group consisting of government, companies and civil society. The results for each country are independently audited and published. Then the entire process is externally validated and finally judged to be compliant or not by the EITI's international board. The free participation of independent civil society is an essential element of this process.

The EITI deals with the issue of democracy and rights largely through guaranteeing the participation of civil society. Transparency without such participation is hollow. The EITI's criteria, principles, and rules articulate a framework for civil society to play an active, free, full and independent role in the process. A country must meet these conditions in order to be deemed compliant with EITI's transparency standard. Appendix II contains some of the key references to civil society from the *EITI Rules*.

A Complementary Transparency Initiative: The Natural Resource Charter

The Natural Resource Charter, in the words of one of its founders, Paul Collier, author of *The Bottom Billion*, "is intended to complement EITI in spelling out, in clear precepts, the entire decision chain by which natural assets can become a blessing instead of a curse."² The Charter articulates an even clearer link than EITI does between transparency and human rights. In part the Charter states, "The principle that the public has a right to full and timely information necessary to meaningfully participate in environmental and social decision-making, which resource extraction invariably involves, has been enshrined in international instruments including the Universal Declaration of Human Rights, the Rio Declaration, the Aarhus Convention, and the OECD Guidelines for Multinational Enterprises."³ The Natural Resource Charter is not an international convention with rules, adherence procedures and sanctions. However, the Charter does represent the most formally articulated statement of best practices for resource rich countries.

EITI Experiences and Mechanisms Dealing with the Rights of Civil Society

The prestige associated with implementation of EITI provides a strong incentive for implementing countries to adhere to its guidelines. Participating governments are highly motivated to maintain their status within the initiative. The EITI Board has repeatedly used its authority to address harassment of civil society organizations or denial of the freedoms civil society needs for its participation to be meaningful. Cases have arisen in Azerbaijan, Gabon, Guinea Conakry, Mauritania, Niger, and the Republic of the Congo. The following examples of EITI's actions or structures illustrate its growing commitment to protect civil society participation.

Ensuring that the Conditions are Right for EITI Implementation

² Paul Collier, "The Natural Resource Charter and EITI," <http://eitransparency.org/blog/natural-resource-charter-and-eiti>

³ Precept 2, *The Natural Resource Charter*, <http://www.naturalresourcecharter.org/images/docs/NATURAL%20RESOURCE%20CHARTER.pdf>

To further strengthen EITI's leverage in dealing with rights abuses, it has been suggested that "implementing countries formally commit themselves to respect the UN Declaration of Human Rights and recognize its applicability to the representatives of the civil society involved in EITI. It also was suggested that EU Member States prepare a statement announcing that their use of the EU Guidelines on Human Rights."⁴

Decisions of the Board: The Case of Ethiopia In one of its most significant recent decisions the board declined to admit Ethiopia as and EITI candidate due to its excessive constraints on freedom of association. The board concluded that Ethiopia's "Proclamation on Charities and Society" would prevent civil society groups from being sufficiently independent and meaningfully participate in the process. The board decided, in effect, not to admit Ethiopia "until the Proclamation on Charities and Society is no longer in place."⁵ This is the only such instance in the history of EITI where a country has failed to be admitted and the grounds for this action was clearly rights-based.

EITI's Rapid Response Committee

The EITI Board has created a Rapid Response Committee to deal with what it calls "implementation problems," largely to protect civil society. When the Committee intervenes it does so with considerable force. This can involve EITI's Chair and members of the multistakeholder committee, which includes governments and companies as well as civil society groups. The emphasis is on ending harassment, coercion or constraints on civil society, without which EITI literally cannot function. In December 2009 EITI adopted a policy imposing sanctions, ranging from suspending to de-listing a country that violates EITI Principles or Criteria.⁶

Interventions by EITI's Rapid Response Committee have helped, if not to correct general patterns of human rights abuse, then to stop harassment in specific cases, using the influence and authority of the Initiative.

Working Group on Participation of Civil Society Organizations in the EITI The discussion of the Ethiopia case has led, in part, to the establishment of a Working Group to address the conditions required for participation of civil society.⁷ The Working Group will soon prepare coherent and comprehensive guidance for the board. The EITI Board should, in a timely and rigorous manner, undertake the assessment it is now commencing via the Working Group on Civil Society Participation, of the necessary conditions that need to be in place to ensure that independent civil society can freely and meaningfully participate in the EITI process. This assessment should guide the revision of the EITI sign-up criterion for countries that are interested in becoming EITI Candidates.

⁴ EITI 9th Board Meeting Minutes

<http://eiti.org/files/Minutes%20of%20the%209th%20EITI%20Board%20Meeting%20-final.pdf>

⁵ EITI 11th Board Meeting Minutes

<http://eitransparency.org/files/Final%20Minutes%20of%20the%2011th%20Board%20Meeting.pdf>

⁶ EITI Policy Note #5, <http://eiti.org/files/PolicyNoteNo05.pdf>

⁷ EITI 11th Board Meeting Minutes

<http://eitransparency.org/files/Final%20Minutes%20of%20the%2011th%20Board%20Meeting.pdf>

Conclusions

The international movement to foster transparency in resource-rich countries has emerged as one of the most potent and fast growing campaigns of recent times. To be effective, transparency needs to develop in a context that provides for meaningful participation by civil society including NGOs, parliament, and the media. The track record of resource-rich countries both in ratification to and implementation of international human rights treaties remains an area of very significant concern. Those concerned with the advance of transparency in these countries must also see to it that basic rights are protected.

The EITI is not a human rights framework, but rather a transparency standard. But EITI has helped to create the space where transparency supporters in civil society can test the political will of their countries to adhere to the commitments they have made by signing onto international human rights agreements; it is also a “gateway” or springboard for transparency and good governance initiatives. As the global transparency standard the EITI is evolving a body of language, actions, and decisions, that define its expectations with respect to the democratic freedoms and rights needed for it to work. The principles, criteria, and rules make it clear that civil society’s participation must be full, active, independent, and free of constraint and coercion.

To make revenue transparency mechanisms effective a concerted effort is needed to protect human rights and create an enabling environment of basic rights and freedoms in resource-rich countries.

Recommendations

To The United States Government and Congress:

- Adopt a clearly integrated approach that focuses human rights support into other policies directed at countries rich in natural resources;
- Press resource-rich countries to adopt all important human rights treaties such as the Optional Protocol to the Convention Against Torture & Other Cruel Inhuman or Degrading Treatment or Punishment and Convention for the Protection of All Persons from Enforced Disappearance;
- Press for full ratification and adherence by resource-rich countries to the United Nations Convention Against Corruption (UNCAC);
- Consistently apply human rights standards to countries with strategic energy resources;
- Continue to press for compliance with already ratified UN Human Rights instruments and treaties;
- Support adoption of freedom of information laws in resource-rich countries;
- Ensure that the International Convention on Civil and Political Rights Article 19 is fully observed as EITI and civil society (including media) cannot function properly without such guarantees;
- Encourage adoption within the EITI of a robust EITI Policy Note on Civil society Participation outlining clearer expectations of applicants, Candidate and Compliant

countries, and encouraging the US State Department's Bureau for Democracy, Rights and Labor to work closely with US government representation on the board;

- Endorse better NGO laws in resource-rich countries using the experiences of groups such as the International Center for Not-for-profit Law.
- Building on the work of groups such as the National Democratic Institute (NDI) and the International Republican Institute (IRI), to build the capacity of parliaments to play their critical oversight role;
- Develop a broad-based integrated program to protect rights of transparency advocates in resource-rich countries bringing in the experience of organizations Freedom House, NDI, IRI, etc.
- Pass the Lugar/Cardin Energy Security through Transparency Act (S.1700).

To the Organization for Cooperation and Security in Europe (OSCE):

- Endorse EITI and forge closer links between resource revenue transparency and human rights observance The shared desire to hold an OSCE Summit with meaningful outcomes opens a door for a discussion on resource revenue transparency with a view of an endorsement of EITI by the Summit.

Thank you for allowing me to testify today to discuss this important subject. I look forward to answering any questions Commission members may have.

Appendix I: Status of Ratification of Human Rights Instruments by EITI Countries

(As of 20 April, 2010)

	UN Convention Against Corruption (UNCAC)	International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	International Covenant on Civil and Political Rights (CCPR)	Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1)	International Covenant on Economic, Social & Cultural Rights (CESCR)	Convention Against Torture & Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)	Optional Protocol to the Convention Against Torture & Other Cruel Inhuman or Degrading Treatment or Punishment (CAT-OP)	Convention for the Protection of All Persons from Enforced Disappearance (CPPED)	African Charter on Human & People's Rights	American Convention on Human Rights
Afghanistan	25-Aug-08	6-Jul-83	24-Jan-83	N/A	24-Jan-83	1-Apr-87	N/A	N/A	N/A	N/A
Albania	25-May-06	11-May-94	4-Oct-91	4-Oct-07	4-Oct-91	11-May-94	1-Oct-03	8-Nov-07	N/A	N/A
Azerbaijan	27-Feb-04	16-Aug-96	13-Aug-92	27-Nov-01	13-Aug-92	16-Aug-96	28-Jan-09	N/A	N/A	N/A
Burkina Faso	10-Oct-06	18-Jul-74	4-Jan-99	4-Jan-99	4-Jan-99	4-Jan-99	N/A	3-Dec-2009	6-Jul-84	N/A
Cameroon	6-Feb-06	24-Jun-71	27-Jun-84	27-Jun-84	27-Jun-84	19-Dec-86	N/A	N/A	20-Jun-89	N/A
Central African Rep.	6-Oct-06	16-Mar-71	8-May-81	8-May-81	8-May-81	N/A	N/A	N/A	26-Apr-86	N/A
Chad	N/A	17-Aug-77	9-Jun-95	9-Jun-95	9-Jun-95	9-Jun-95	N/A	N/A	9-Oct-86	N/A
Congo	13-Jul-06	11-Jul-88	5-Oct-83	5-Oct-83	5-Oct-83	30-Jul-03	N/A	N/A	9-Dec-82	N/A
Côte d'Ivoire	N/A	4-Jan-73	26-Mar-92	5-Mar-97	26-Mar-92	18-Dec-95	N/A	N/A	6-Jan-92	N/A
Democratic Rep. Congo	N/A	21-Apr-76	1-Nov-76	1-Nov-76	1-Nov-76	18-Mar-96	N/A	N/A	20-Jul-87	N/A
Equatorial Guinea*	N/A	8-Oct-02	25-Sep-87	25-Sep-87	26-Sep-87	8-Oct-02	N/A	N/A	7-Apr-86	N/A
Ethiopia*	26-Nov-07	23-Jun-76	11-Jun-93	N/A	11-Jun-93	14-Mar-94	N/A	N/A	15-Jun-98	N/A
Gabon	1-Oct-07	29-Feb-80	21-Jan-83	N/A	21-Jan-83	8-Sep-00	N/A	N/A	20-Feb-86	N/A
Ghana	27-Jun-07	8-Sep-66	7-Sep-00	7-Sep-00	7-Sep-00	7-Sep-00	N/A	N/A	24-Jan-89	N/A
Guinea	N/A	14-Mar-77	24-Jan-78	17-Jun-93	24-Jan-78	1-Oct-89	N/A	N/A	16-Feb-82	N/A
Iraq	17-Mar-08	14-Jan-70	25-Jan-71	N/A	25-Jan-71	N/A	N/A	N/A	N/A	N/A
Kazakhstan	18-Jun-08	26-Aug-98	24-Jan-06	30-Jun-09	24-Jan-06	26-Aug-98	22-Oct-08	27-Feb-09	N/A	N/A
Kyrgyzstan	16-Sep-05	5-Sep-97	7-Oct-94	7-Oct-94	7-Oct-94	5-Sep-97	29-Dec-08	N/A	N/A	N/A

Liberia	16-Sep-05	5-Nov-76	22-Sep-04	N/A	22-Sep-04	22-Sep-04	22-Sep-04	N/A	4-Aug-82	N/A
Madagascar	22-Sep-04	7-Feb-69	21-Jun-71	21-Jun-71	22-Sep-71	13-Dec-05	N/A	N/A	9-Mar-92	N/A
Mali	18-Apr-08	16-Jul-74	16-Jul-74	24-Oct-01	16-Jul-74	26-Feb-99	12-May-05	1-Jul-09	21-Dec-81	N/A
Mauritania	25-Oct-06	13-Dec-88	17-Nov-04	N/A	17-Nov-04	17-Nov-04	N/A	N/A	14-Jun-86	N/A
Mongolia	11-Jan-06	6-Aug-69	18-Nov-74	16-Apr-91	18-Nov-74	24-Jan-02	N/A	N/A	N/A	N/A
Mozambique	9-Apr-08	18-Apr-83	21-Jul-93	N/A	N/A	14-Sep-99	N/A	N/A	22-Feb-89	N/A
Niger	11-Aug-08	27-Apr-67	7-Mar-86	7-Mar-86	7-Mar-86	5-Oct-98	N/A	N/A	15-Jul-86	N/A
Nigeria	14-Dec-04	16-Oct-67	29-Jul-93	N/A	29-Jun-93	28-Jun-01	27-Jul-09	27-Jul-09	22-Jun-83	N/A
Norway	29-Jun-06	6-Aug-70	13-Sep-72	13-Sep-72	13-Sep-72	9-Jul-86	N/A	N/A	N/A	N/A
Peru	16-Nov-04	29-Sep-71	28-Apr-78	3-Oct-80	28-Apr-78	7-Jul-88	14-Sep-06	N/A	N/A	12-Jul-78
Sao Tome & Prin.*	12-Apr-06	N/A	N/A	6-Sep-00	N/A	N/A	N/A	N/A	N/A	N/A
Sierra Leone	30-Sep-04	2-Aug-67	23-Aug-96	23-Aug-96	23-Aug-96	25-Apr-01	N/A	N/A	21-Sep-83	N/A
Timor-Leste	27-Mar-09	16-Apr-03	18-Sep-03	N/A	16-Apr-03	16-Apr-03	N/A	N/A	N/A	N/A
United Rep. of Tanzania	N/A	27-Oct-72	11-Jun-76	N/A	11-Jun-76	N/A	N/A	N/A	18-Feb-84	N/A
Yemen	7-Nov-05	18-Oct-72	9-Feb-87	N/A	9-Feb-87	5-Nov-91	N/A	N/A	N/A	N/A
Zambia	7-Dec-07	4-Feb-72	10-Apr-84	10-Apr-84	10-Apr-84	7-Oct-98	N/A	N/A	10-Jan-84	N/A
TOTAL (of 34)	28	33	33	24	32	31	8	5	all African	all American

*delisted or denied EITI candidature

Appendix II: Key References to the Role of Civil Society from EITI Documents

EITI Principles (2003). Principle #8 “We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.”

EITI Criteria #5 (2005) Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.”

Sign-up Indicator #2 “has the government committed to work with civil society and companies on EITI implementation?”

Preparation Grid Indicator #5 Has the government established a multi-stakeholder group oversee EITI implementation? And to judge this evidence must be presented demonstrating that society groups and “other civil society such as media and parliamentarians” are and feel to be adequately represented , are independent operationally and in policy terms, without coercion or constraint,

Preparation Grid Indicator #6 Is there active engagement with civil society, whether through the multi-stakeholder group or in addition to the multi-stakeholder group and are. CSO’s “free to express opinions on EITI without undue constraint or coercion.”

Preparation Grid Indicator #8 Did the government remove any obstacles to EITI implementation (including a review of the legal framework)?

Board Policy Note #5 establishes a procedure on how the EITI Board may temporarily suspend or de-list an EITI implementing country. Where the EITI Board is concerned that adherence to the EITI Principles and EITI Criteria is compromised, it shall task the International EITI Secretariat with gathering information about the situation and submit a report to the EITI Board. The most explicit reference is made to EITI Criteria #5 (listed above), among others as a cause for suspension or de-listing.