

THE LINK BETWEEN REVENUE TRANSPARENCY AND HUMAN RIGHTS

HEARING

BEFORE THE

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

APRIL 22, 2010

Printed for the use of the
Commission on Security and Cooperation in Europe

[CSCE 111-2-4]



Available via <http://www.csce.gov>

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 2012

75-404 PDF

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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April 22, 2010

COMMISSION ON SECURITY AND COOPERATION IN EUROPE
WASHINGTON, DC

The hearing was held at 2:30 p.m. in room 430 Dirksen Senate Office Building, Washington, DC, Hon. Alcee L. Hastings, Co-Chairman, Commission on Security and Cooperation in Europe, presiding.

Commissioners present: Hon. Alcee L. Hastings, Co-Chairman, Commission on Security and Cooperation in Europe; and Hon. Benjamin L. Cardin, Chairman, Commission on Security and Cooperation in Europe.

Witnesses present: Daniel B. Baer, Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor, U.S. Department of State; Ian Gary, Senior Policy Advisor/Manager Extractive Industry, Oxfam America; Anthony Richter, Chairman of the Governing Board, Revenue Watch Institute; and Max Bokayev, Chairman, Arlan.

HON. ALCEE L. HASTINGS, CO-CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. HASTINGS. All right, good afternoon and welcome to the Helsinki Commission hearing on “The Link Between Revenue Transparency and Human Rights.” Over the past few years, the Commission has actively worked to make revenue transparency an integral part of U.S. foreign policy and also worked to encourage revenue transparency among the 56 participating States of the Organization for Security and Cooperation in Europe.

According to Transparency International, 6 of the top 10 oil-exporting countries to the United States are among the most corrupt countries in the world. A lack of transparency within governments and the energy sector poses both a threat to energy exports and the ability of governments to properly manage revenue for their citizens. These governments are not accountable to their citizens and have taken advantage of the resources of the Nation in pursuit of the self-interest of a few corrupt leaders.

Oil and gas companies have generated enormous revenues for a number of countries yet rather than improving the lives of ordinary families, this money has often fueled wars and corruption, weakened economic development and worsened poverty.

One of the key ways the international community has sought to counteract the political and economic instability inherent in the re-

source curse is through programs that seek to instill transparency and accountability into the resource-payment system. EITI is the leader in this field.

Corruption in these nations not only affects the citizens of those countries but it comes back to us squarely here in the United States in terms of energy security. Here's the linkage: Corruption and kleptocracy in resource-rich countries lead to political instability, drive up oil prices and present significant risks to U.S. investments.

As citizens in oil-producing countries become disgruntled with their own governments and with foreign investors whom they believe to be corrupt, such citizens can foster political unrest and threaten oil supplies. And we haven't begun to talk about the incredible human toll in countries where citizens are deprived of basic services while the government leaders buildup their offshore bank accounts.

Each of the countries we are talking about today whether it be Russia, Kazakhstan, Turkmenistan, Uzbekistan, or Azerbaijan, they face some aspect of this resource curse. And while the situation in each country is unique, we can generalize and say that the lack of transparency in politics and in oil-and-gas deals is at the root of many of their social problems.

EITI is a crucial first step. But I'm concerned that with regard to civil society and free press, we may be stopping far short of the finish line and declaring winners before they have completed the race.

I'm looking forward to hearing today's witnesses and I hope that they will address the situation in some of the recently validated countries such as Azerbaijan, where we see continued assaults on freedom of speech and on civil society and how that bodes for the future of EITI implementation.

I would apologize for many of my colleagues—I know some of them had plans to be here but the House of Representatives recessed early today and that caused some of them that are our members to head home to their constituencies. Senator Cardin, the Chair of this Commission is voting at this time but I expect that he will join us shortly.

But I'm pleased that we do have excellent panels here today that will give us their perspective on this issue. We have provided the biographical information and curriculum data of our respective witnesses. That's been distributed. But I would like to just introduce our first presenter, Mr. Daniel Baer, the Deputy Assistant Secretary for Democracy, Human Rights and Labor at the State Department. Mr. Baer, you may begin.

DANIEL B. BAER, DEPUTY ASSISTANT SECRETARY, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEPARTMENT OF STATE

Mr. BAER. Thank you very much, Mr. Chairman. My statement says good afternoon, Mr. Chairman and distinguished members of the committee, but I'll address you alone.

Mr. HASTINGS. We're all here. We have the cameras and the recording and, trust me, we do put it up on our Web site, so you're being watched.

Mr. BAER. [Laughter.] All right. Duly noted.

I appreciate the opportunity to appear before you today and to speak on the link between revenue transparency and human rights in resource-rich countries within the context of the efforts of the Department of State to support civil society and to promote human rights globally. I ask that my full written statement be submitted for the record.

Mr. HASTINGS. Without objection.

Mr. BAER. Today, over 50 countries, representing 3.5 billion people, are considered rich in natural resources such as oil, gas and minerals. However, nearly half of the 3.5 billion in resource-rich countries live on less than \$2 a day. This fact presents an obvious puzzle. If the countries are resource-rich, why are their people so poor?

As you know, one explanation for this puzzle is what development economists have called the resource curse, a theory that explains how apparent abundance can lead to economic underdevelopment and, in many cases, armed conflict.

The sustainable and responsible management of natural resource wells is a complex challenge, one that defies easy solutions. There are no silver bullets. Decisions about how to manage volatile revenue flows so that natural resources can become a basis for social investment and sustained economic growth are difficult even when all the facts are on the table.

In reality, many of the facts have often been hidden. Revenues from resources are often unknown by citizens, controlled by an opaque group of government leaders and dispensed without consultation or a transparent process, a fact that exacerbates the challenges and negative consequences of the resource curse.

Secrecy contributes to and enables poor governance. Transparency and accountability in the management of natural resources can help counter corruption, improve governance and foster economic growth. Transparency is not a panacea but it is an important first step. It's a way of putting more facts on the table.

It's no coincidence that countries where corruption is prevalent often exhibit poor respect for human rights, as illustrated in the most recent edition of the State Department's Country Reports on Human Rights Practices. It is important to underline the link between corruption and human rights as well as the key role that civil society can play in fighting corruption and promoting respect for human rights. Corruption corrodes a government's ability to protect human rights and to ensure its own respect for human rights. Transparency and access to information empower individuals to make informed decisions, from exercising their voting rights to monitoring state expenditures. Conversely, endemic corruption can obstruct law enforcement and judicial processes.

In our annual Country Reports on Human Rights Practices, we have in recent years increased efforts to highlight the link between human rights abuses and the lack of accountability surrounding the extraction of natural resources.

Our reports have underlined that in countries where citizens lack the right to access government-held information and where corruption and the extract of industries remains a serious problem, transparency activists, NGOs and journalists have been subject to har-

assment, arbitrary arrest and detention and even death threats for investigating and reporting corruption allegations. Our reports also underline the same link to trafficking and labor rights abuses, including the use of forced labor and child labor in unsafe mines.

Our reporting has and continues to inform our policy. Fighting corruption has long been a central element of U.S. foreign policy. As far back as 1977, which incidentally is the same year that we began the Country Reports on Human Rights Practices, the United States enacted the Foreign Corrupt Practices Act and made it illegal for U.S. citizens to bribe foreign officials for the purpose of obtaining or retaining business. The United States was similarly the principal force behind the 1997 OECD Anti-Bribery Convention and the United Nations Convention against Corruption.

President Obama reaffirmed our commitment in Ghana last year, saying, what America will do is “increase assistance for responsible individuals and institutions with a focus on supporting good governance,” including “concrete solutions to corruption on concrete solutions to corruption like forensic accounting, automating services, strengthening hot lines and protecting whistle-blowers to advance transparency and accountability.”

In U.S. transparency-promotion efforts, partnerships with and support for civil society are central. Civil society can play a key role in fighting corruption of all kinds but only if governments respect their obligations to give it proper space. Civil society could be a particularly powerful force for its citizens when working with companies and governments in multi-stakeholder initiatives in efforts to increase transparency and respect for human rights.

When done right, multi-stakeholder initiatives can create transnational advocacy networks, led by a group of governments, NGOs and corporate entities that collaborate to establish common standards, predictable accountability mechanisms and institutionalized sharing of best practices.

The subject of today’s hearing, the extractives industry transparency initiatives, EITI, is a prime example. NGOs gave the initial push toward greater resource transparency, then at their summit in Evian in 2003, G-8 leaders agreed upon an action plan that included piloting on a voluntary basis, an intensified approach to transparency in countries where revenues from extractive industries are important.

The EITI principals were subsequently agreed at a conference at Lancaster House in London. The EITI provides a uniform criteria against which each implementing country is assessed in a validation process. Criteria include assessments of the quality and accuracy of payments and reporting and of the ability of civil society to engage in the process.

Currently, 29 EITI candidate countries are implementing. And two other countries, Liberia and Azerbaijan, have recently completed the validation process. Each of the remaining candidate countries is in various stages of implementation, undertaking a multistep process to strengthen revenue transparency.

As I mentioned already, the EITI was founded on the basis of an initiative by civil society. And one of EITI’s strengths is that significant involvement of civil society, including human rights organizations, is central. And while its primary purpose is supporting

revenue transparency this ongoing inclusion of civil society is an important feature of the EITI.

The EITI in itself is not sufficient to eradicate corruption. It is not a substitute for an open and participatory budget process. However, it can be an essential part of the solution and it represents an important step. The multi-stakeholder approach of the EITI is creating a platform for dialogue and engagement which previously did not exist in many countries and the EITI reporting process is generating data on revenues that were either unavailable or difficult to access previously.

As we proceed, we will work to ensure that the participation of civil society is preserved and that implementation of EITI continues in a way that bolsters the credibility of the initiative. The still-to-be-completed process of implementation for the EITI candidate countries points to the challenges ahead. Stepped-up efforts will be needed to ensure that EITI principles are translated into reality.

In the longer term, we will continue to emphasize the benefits of enhanced fiscal and budgetary transparency, including through EITI and similar multi-stakeholder initiatives to all participants; reduce corruption; better governance; increased transparency and openness; more accountability; an improved investment climate; and greater respect for individual rights. As Secretary Clinton has put it, "Sunshine is the best disinfectant." Thank you very much and I look forward to answering your questions.

Mr. HASTINGS. Let me start with China's role in all of this, Dr. Baer. How do you perceive it?

Mr. BAER. Up until now, China—we would encourage China to join the United States as a supporter of the EITI. Obviously, China is an important player in the global stage, they are an important downstream processor for the extractives industries and this is an initiative that we would welcome them to support.

Mr. HASTINGS. And what about other countries in South America? What role are they playing?

Mr. BAER. Well, I think at this critical juncture where we've kind of launched a process and we're in the first class, if you will, of members, the most important thing is to get the process going in a way that builds credibility.

And at this point, there's always a question with multi-stakeholder initiatives about whether you expand the membership as your first focus or whether you get the thing going. And you kind of have to do both at the same time. You have to build the car and drive it. So certainly, we would support other countries who see the EITI as a useful way to anchor and publicize their commitments to transparency. We would support their becoming candidate countries and we would support other countries joining us as supporters of EITI.

Mr. HASTINGS. So you do agree then, that there's a link between transparency and good governance?

Mr. BAER. Certainly, I fully agree that there's a link between transparency—

Mr. HASTINGS. Does one lead to the other?

Mr. BAER. One is a prerequisite, I would say, for the other. I mean, when we talk about the link between transparency and good

governance, especially in this context, we're talking about good governance in two different senses, actually; two different senses of the word "good" because we're talking about good governance in the sense of non-corrupt governance transparency is a good way to put up obstacles for corruption in places where resources are extracted—but we're also talking about good governance in the important way that you talked about in your opening statement in terms of governance that does the right thing for its people.

And even in the best circumstances, we talk about the resource curse and what it means for countries, the resource curse—part of the resource curse is what's known as Dutch disease and the resource curse affects not only countries that have poor governance but countries that have good—well-entrenched institutions of governance. It's a challenge for anyone, and as I said, we see transparency as putting the facts on the table. Managing those facts, managing the fluctuation in commodity prices, the fluctuation in exchange rates, et cetera, is difficult no matter whether you have the best minds around the table or you have corrupt minds around the table, so it's good governance in two senses.

Mr. HASTINGS. I don't disagree with the thing that you said; I'm concerned to know, though, how the U.S. initiatives increase good governance and lead to better human rights.

Mr. BAER. I think the EITI is one of many tools in our tool kit. And the U.S. Government provides a full range of assistance to countries—not just the EITI. We provide a full range of assistance not only to governments—willing governments that want to improve governance in terms of helping them reform judicial sectors or law enforcement—but also to civil society and bolstering civil society's ability whether it's training journalists to report on corruption and other human rights concerns or bolstering civil society's ability to create a forum for debate within countries.

At the end of the day, what we're trying to do is not hold these countries accountable ourselves but help empower the citizens of these countries to hold their governments accountable to do right by them.

Mr. HASTINGS. Right. Dr. Baer, I take advantage of this moment to say to you that I have been to the countries I'm about to address: Turkmenistan, Uzbekistan, and Azerbaijan. In Azerbaijan, I had the responsibility of leading the election observation of one of their recent Presidential elections. Uzbekistan, I believe I'm the only Member of Congress that has spent a week there [Laughter.]—

Mr. BAER. Lucky you. [Laughter.]

Mr. HASTINGS [continuing.] And/or that have been there at least six different times. And in Turkmenistan—I just share this with you because it goes into the aspect of human rights, I believe. I traveled to Turkmenistan a few years back with a now-deceased member and good friend of mine, a Republican, Gerald Solomon. It was one of the most interesting trips that I've ever been on and it was at Thanksgiving time and we visited the Peace Corps that had a limited number of people there but that were doing an awesome job with just the few people that they had.

Turkmenistan is the only place that I have been in the world that I could not coax a smile out of a child. I don't care whether

I'm in Africa or China, in the United States, I care about little children and I try to make them comfortable and I can always coax a smile out of them. I had the most blank stares from children in that place of any that I've ever been to.

In Azerbaijan and Uzbekistan—and I might add when I was in Turkmenistan, the reference to Turkmenbashi, he's now deceased, was prominent everywhere. Everywhere you went, you saw pictures of their leader.

In Uzbekistan, I have had the good fortune of getting to know President Karimov. And in Azerbaijan, I evidently have been on the wrong side of the views of the present government. But I was treated hospitably in those places.

But one of the things that I have a habit of doing is going off the reservation from the State Department or the Defense Department and either catching a bus or riding a trolley or walking among the people. And clearly, all of these countries are missing some links to better human rights and better civil societies.

Toward that end, how then does Azerbaijan get certified with reference to EITI? Talk to me about that. How does that happen and how do we ignore, or if we do not ignore, how do we turn a blind eye to the fact that there's little space for the media in civil society.

A frequent contributor to our efforts here is Freedom House and they've long signified that Azerbaijan was not free. I made a critical review of their election process when I was there and I stand by it. Based on what I saw. I'm from Florida and if there's a bad election, I know about [inaudible]—elections. [Laughter.] So I called it like I saw it. But yet I look up and I see that they're on the certification list and you mentioned in your testimony the two more recent ones, Liberia and Azerbaijan. Talk to me about those two, for example, and we'll leave Uzbekistan and Turkmenistan for another time.

Mr. BAER. I'd like to pick up toward the end of your question with the question of turning a blind eye, and say that certainly we agree with your concerns and absolutely we cannot turn a blind eye to the concerns about constrictions on the media, on human rights activists, on civil society in Azerbaijan. That remains a focus of our human rights reports released last month and it remains a focus of our diplomacy and our programming and we need to hold fast to that.

As far as the certification of Azerbaijan, I will refrain from comment about the certification process because it was done by the board. My understanding is that it was carried out according to the initiative's predetermined process and that Azerbaijan met the standards.

I will say two things, however. One is that there was a work place that was assigned to Azerbaijan when they were certified on civil society and on making sure that civil society was brought to the table in terms of the context of implementing the EITI in-country. We have followed and will continue to follow that work plan because we think that is crucial.

The other comment that I would make is that I think with these multi-stakeholder initiatives, first of all, churches are for sinners, not just for saints, and part of our goal is to get the sinners in and to get them to commit to standards so that they can improve. And

we should see this as a dynamic process which, having made these commitments, gives us something to anchor our comments and our consistent pressure to, and so that's something that we should look at going forward.

The other thing is that it's not just—it's not just civil society that should be helped by EITI but also EITI's success depends on civil society. The transparency is only valuable—you know, bringing the facts to the table and not having anybody around the table to talk about them isn't valuable. It calls to mind the—if a tree falls in the forest and no one's there to hear it. And so I think we see a two-way street there. And certainly, the future of the EITI depends on us continuing to work tirelessly to make sure that civil society has a place at the table and to counter through our diplomacy and programming restrictions on civil society in places like Azerbaijan.

Mr. HASTINGS. I think your remarks are very salient in that regard and all, but what role could the United States and more specifically this particular structure, the Organization for Security and Cooperation in Europe, what role could we have in supporting already-existing initiatives to promote transparency and combat corruption?

Mr. BAER. Yes, well I think the OSCE in many ways reflects—is an institution that reflects the connection between transparency and good governance that we talked about before. The unique aspect of the OSCE in terms of its comprehensive approach to security and seeing the connections between political, military security, environmental, and economic security and the human dimension really goes to the heart of what initiatives like EITI are about, and certainly in the context of this sort of hearing. I think continuing to advocate for that comprehensive approach to security is one thing at the rhetorical level.

At the most concrete level, I think that the field missions of the OSCE can be critically important in terms of advocating for implementation in countries. I know that members and their staff travel frequently to visit these field missions and I think that by shining a spotlight on their work, you contribute to their ability to do that and I think that's critically important.

Mr. HASTINGS. Right. One final question and then I'll move onto the next panel is the role—well, do you perceive any policy measures that the United States could take to further promote transparency in these resource-rich countries? And what about the role of international-lending institutions such as the World Bank and the International Monetary Fund? How do you address that?

Mr. BAER. Let me take that in two parts. As a general policy area, I think that one of the things we've seen in recent years is an aggressive attack on civil society in many places around the world. And I think one of the policy measures that we can take generally speaking is to be equally aggressive in countering that attack.

Civil society, those are the voices that have to hold governments accountable in the end and we should be steadfast in our commitment to protect the space in which civil society operates to make sure that they have the capacity that they need to hold governments accountable.

In terms of the international financial institutions, I do know that certainly the World Bank is a supporter of the EITI. We support the EITI through the World Bank's multi-donor trust fund and certainly the World Bank and other international financial institutions are involved in many of the extractive industry development deals around the world.

I would defer to my colleagues at Treasury since they manage the relationship with those institutions but I do know that there's political support from the World Bank and I do know that technical assistance of the sort needed to implement EITI is often part of the broader package that defines the relationship of those institutions with the countries they're working with.

Mr. HASTINGS. I mean my remarks now to be complimentary and not patronizing. I appreciate, genuinely appreciate, your testimony—clear, concise and quite frankly I'm glad that you have the portfolio that you do and that you are available to this committee to provide information to us as you have now, and I can assure you we'll continue to call upon you and your colleagues to address this particularly difficult area and nascent development issue.

I had said I had one last question but as I was thinking along about your testimony, you spoke about the G-8 and actions that they had undertaken and then you mentioned Lancaster House where there was some kind of followup.

One of my criticisms, not of the State Department but just give me some feedback on this. One of my criticisms is the gap between the big meeting and the action and the followup and another big meeting. I could go from the ministerial in OSCE to regional meetings and go back and forth.

And that doesn't seem to me to be a sustained effort to accomplish the ends that we all want. And to my way of thinking, it's really an all-day, everyday thing and not just, we had a feel-good meeting and everybody came together, the G-8 shook hands, they sipped some wine, they made a statement and then they met at Lancaster House, and who the hell knows about all of this and how do we get to know about all of this, and when is it that we can have a matrix that demonstrates that we did what we intended to do and what the failures and lack of follow-through did or did not do?

Now, that's a whole lot but I ask you to sum that up for me.

Mr. BAER. I will try, Mr. Chairman. [Laughter.] Certainly, I wholeheartedly agree with you that at some point you have to say, talk is cheap, let's do it. And I think that what we see across the board with these multi-stakeholder initiatives is that, indeed, they are voluntary.

In terms of being voluntary, you get to choose whether to join them. But they only matter if you make joining mean something. And the way to make joining mean something is to not only have a set of principles but also to have an accountability mechanism that allows other members to respectfully but purposefully hold you accountable for living up to the commitments that were made.

And so I think that one of the things that we will be continuing to work on, not only in the context of EITI but with other multi-stakeholder initiatives, is to make sure that it's not—and the accountability mechanism can't be a "gotcha." It's not a "gotcha"

mechanism. It's a way to drive concrete changes on the ground. And we want to make sure that we're putting in place accountability mechanisms that are dynamic, that aren't just a threshold and you get over it and then you can coast; that are dynamic, that drive at constant improvement and that really do mean that it's a 365-day-a-year initiative and not just a series of meetings by high-ups.

Mr. HASTINGS. I like that. Thank you, sir, very much. You certainly are welcome to stay but I understand you may have to be about your business. But I thank you for your presentation and would now like to call up our next panel. If you would, Dr. Baer.

Mr. BAER. Thank you very much.

Mr. HASTINGS. Thank you, sir. I'd like now to welcome Mr. Ian Gary, the senior policy advisor for extractive industries with Oxfam America. And then Mr. Max Bokayev with Arlan, an NGO from Kazakhstan. And finally, Mr. Anthony Richter, the chairman of the governing board of the Revenue Watch Institute. And as I indicated earlier, the biographical data on all of these gentlemen is available at our desk outside.

Why don't we start with you, Mr. Gary? You're in the middle.

IAN GARY, SENIOR POLICY ADVISOR/MANAGER EXTRACTIVE INDUSTRY, OXFAM AMERICA

Mr. GARY. Well, thank you Co-Chairman Hastings and thank you to the members of the U.S. Helsinki Commission for their interest in this important and timely issue and for the opportunity to testify.

Oxfam America's worked to address the problems of resource-rich countries which have been described in the first panel for more than 10 years. Oxfam America is a member of the global Publish What You Pay coalition, a coalition of groups that help citizens in resource-rich developing countries hold their governments accountable for the managements of revenues from oil, gas and mining industries.

As we've mentioned in the first panel, many experts have identified secrecy in extractive industries as a major obstacle to reform. In many countries, contracts between foreign firms and host governments are shielded from public view and there is little information about payments from companies to governments.

In addition, governments are often not providing their citizens with accurate, timely and complete information about government budgets and expenditures. While addressing these transparency gaps has been at the heart of the international reform agenda, most agree that improving transparency in the extractive industries is a necessary but not sufficient ingredient for reforming the management in use of extractive industry revenues.

Starting in 2002 after the establishment of the Publish What You Pay campaign, as you've heard, the EITI has been seeking to increase transparency in resource-rich states. EITI's rules include the active participation of civil society groups.

While transparency in the efforts of EITI are an important first step, it has taken a long time to make progress and many policymakers and participants, I would argue, have lost sight of the bigger picture.

The transparency agenda does not work without improvements in political accountability mechanisms, including basic human rights such as freedom of expression and association. In some countries, there is a yawning chasm between limited progress on transparency and little or no progress on human rights. EITI must not just be a technocratic exercise of publishing numbers; otherwise we may end up with the creation of a Potemkin village of good governance designed for donor consumption while underlying problems of political accountability remain unaddressed.

So the question is, does EITI contribute to increasing democratic debate and improving human rights? In some countries, it is clear that EITI has disclosed new information and provided a platform for civil society groups to engage with their own governments. In Ghana, for example, the EITI process in the mining sector has raised awareness about weakness in government royalty collection and heightened the debate on the use of oil revenues that will flow into Ghana starting next year.

But in Ghana, there is a vibrant civil society, active press and a generally favorable human rights environment. In other countries, the impact of EITI in human rights, the development of independent civil society and improvements in the use of government revenue is questionable. EITI might help open up the previously taboo subject of government revenues from extractive industries in some countries, but there is often a limit as to how much openness will be tolerated and whether the government will allow information disclosed through EITI to be used by watchdog groups, journalists and parliamentarians.

In Azerbaijan, there is some evidence that civil society capacity has improved during EITI implementation. But progress in EITI implementation has been set against a weak human rights record for the country, as you just mentioned. The country received EITI compliance status in February 2009 even though no multi-stakeholder working group had been established, a requirement under EITI and in spite of questions regarding the accuracy and comprehensiveness of EITI payment information.

Throughout 2009, the status of Azerbaijan came into question as the country did not fulfill the conditions that the board had set for Azerbaijan in order to retain its compliant status. Azerbaijan finally fulfilled these conditions in February of this year, 1 year after it was initially deemed compliant by the board. While Azerbaijan had somewhat prematurely been deemed compliant, the State Department and other human rights observers noted a worsening of government restrictions on freedom of association during 2009 and found that the government does not respect freedom of expression or the press in practice.

In Equatorial Guinea, a country marked by massive oil-fueled corruption and ruled by an authoritarian regime, the country was allowed to join EITI as a candidate in 2008, even though the human rights situation is dire and the few civil society groups which exist operate under severe restrictions. Equatorial Guinea was dropped from EITI on April 15th, after it was not granted an extension in order to complete its validation process.

In other countries, the gulf between EITI and human rights practice has also been wide and the board has not taken forceful action.

Activists have been harassed, arrested, prevented from traveling abroad and had their NGOs deregistered by the government. For example, in Gabon, in 2008, activist Marc Ona was detained and prevented from traveling abroad and many NGOs involved in the local Publish What You Pay coalition in the country were deregistered by the government. All this occurred while the government of Gabon served on the EITI board.

So how should the United States improve its international effort on these issues? A few suggestions: First, the United States should develop concrete strategies for human rights promotion and protection in resource-rich states, with clear targets and benchmarks. Where EITI is being implemented, such strategies should be integrated with donor support for EITI processes. EITI, by itself, cannot serve as a stand-in for such strategies and it would be unwise to think that EITI alone will spur significant progress on human rights, civil society development or anti-corruption efforts. To pretend otherwise would in some cases mean that EITI was being used simply as a fig leaf to cover up a lack of such strategies by donors and a lack of progress on human rights and political accountability.

Second, the U.S. State Department's Bureau of Democracy, Human Rights and Labor should actively engage in the global EITI process, for example, through participation in EITI's rapid response board committee, focused on protection of civil society activists. Third, the United States should increase support for efforts by civil society journalists and others to disseminate and popularize information disclosed as a result of EITI. Such steps, such as radio programs in local languages, are relatively inexpensive and can be quite powerful.

Finally, while EITI is making some progress in some countries, the pace and depth of progress today and the fact that many resource-rich countries are outside the process show that other complementary measures are needed.

The U.S. Congress should pass the Energy Security through Transparency Act, which was introduced in the Senate last year, and we hope companion legislation will be introduced in the House shortly. This legislation in the Senate, sponsored by Senators Lugar and Cardin, the Chairman of this Commission, would increase the disclosure of oil, gas, and mining company payment information to host governments around the world. The legislation would complement EITI and provide regular information on payments to host governments.

This type of disclosure would not depend on the waxing and waning of political will or the voluntary participation of countries in EITI. This legislation is endorsed by a broad range of anti-poverty, human rights, environment and faith-based groups and, for example, by a mining industry representative, Newmont Mining. We would also like to see the Obama administration clearly support the Energy Security Through Transparency Act.

With these words, thank you for allowing me to testify today and I look forward to your questions.

Mr. HASTINGS. I just wanted to make one observation. We did have that measure that Senators Cardin and Lugar introduced. We passed it in the House in the Financial Services Committee [in-

audible] all right. The language itself should be in conference so hopefully we will be able to do that.

But thank you for your testimony. Because we have given Mr. Bokayev added time, Mr. Richter, maybe if you're ready, you go forward and then we will hear from Mr. Bokayev. It really doesn't matter to me but we agreed to give him additional time.

**ANTHONY RICHTER, CHAIRMAN OF THE GOVERNING BOARD,
REVENUE WATCH INSTITUTE**

Mr. RICHTER. Thank you, sir. Chairman Hastings, thank you for the opportunity to talk to you today about the link between natural resource revenue transparency and human rights. It's a particular pleasure to come before this Commission, which under you and Senator Cardin has shown outstanding leadership on the issue of transparency. I'm also pleased to be here before the Helsinki Commission at this time because Kazakhstan is both the Chair-in-Office of the OSCE and an EITI candidate country.

Briefly about Revenue Watch: We are a non-profit policy institute and grant-making organization that promotes the responsible management of oil, gas and mineral resources in resource-rich countries. We've been involved in the extractive industries transparency initiative since its inception and I'm currently a member of its international board representing civil society.

I'd like to make just three brief points and allow time for discussion and for the final panelists. First, I'd like to address the connection between revenue transparency and human rights. Second, I want to make a couple of observations about the adherence of resource-rich countries to international governance and rights norms. Third, I'd like to describe what EITI, the global voluntary standard in resource revenue transparency, is doing to address questions of rights and democracy. I'll conclude, if I may, with some policy recommendations for your consideration.

First, how are revenue transparency and basic freedoms connected? Clearly, revenue transparency can only be meaningful in a society that respects basic rights and freedoms. These rights are necessary for the public to learn the facts about how their society is governed, to air this information in the media and to hold free elections when they want a change. Among other things, 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. You need these freedoms and rights in order to use the data that comes out of EITI reports.

My second point: What is the record of resource-rich countries on adherence to rights and governance norms? Well, by and large, it's not very good. Poor governance and corruption in resource-rich countries correlates highly to violation of rights. One indicator that we've been looking at to get at some detail on this is the rate at which resource-rich countries in the EITI sign up to human rights and governance instruments. The table in my testimony shows much work needs to be done to get a better overall sign-up to these instruments.

For example, very few EITI countries have signed the OPCAT, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The same

is true for the Convention for the Protection of all Persons from Enforced Disappearance. Resource-rich countries, not surprisingly, 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. But of the countries implementing EITI, only six have a law providing access to information. A number of the EITI countries have also failed to ratify the U.N. Convention against Corruption and as we all know, ratification is only the beginning.

So if we need a better rights environment in resource-rich countries, then we need a targeted and integrated strategy, then, to advance rights and freedoms. Third point about the EITI: How does EITI, the world's major voluntary transparency standard—what does it say and do about rights? The EITI deals with the issue of democracy and rights largely through guaranteeing the participation of civil society in the multi-stakeholder process. EITI believes that transparency without such participation is hollow. The EITI criteria principles and rules articulate a clear framework for civil society to play an active, free, full and independent role in the process.

So what is EITI doing about this and how are they taking the rights and freedoms agenda forward? I call your attention to some recent important developments. First, the recent decision of the board in the case of Ethiopia: In one of its most significant recent decisions, the board declined to admit Ethiopia as an EITI candidate due to its proclamation of charities and society. The board decided, in effect, not to admit Ethiopia, quote “until the proclamation on charities and society is no longer in place,” because the law restrained NGOs too much. 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 were clearly rights-based.

Second, EITI's Rapid Response Committee: The EITI board has created a Rapid Response Committee to deal with what it calls, quote, unquote, “implementation problems.” It also intervenes to protect civil society. When civil society actors are harassed or feel that they are no longer independent, the committee intervenes and it does so with considerable force, though sometimes from behind the scenes.

Third, in December 2009, EITI adopted a new policy giving the board power to impose sanctions ranging from suspending to delisting a country that violates EITI principles or criteria. And finally, EITI has created a working group on participation of civil society organizations in EITI. The discussion of the Ethiopia case may have led in part to the establishment of this working group to address the conditions required for participation of civil society and it will soon prepare coherent and comprehensive guidance for the board.

In conclusion, I'd like to offer four recommendations for your consideration. First, in resource-rich countries, the U.S. Government should adopt a clearly integrated approach that focuses human rights support into other policies directed at countries rich in natural resources, including pressing resource-rich countries to adopt all important human rights treaties and governance norms and supporting the adoption for freedom of information laws in resource

rich countries, as well as ensuring that the International Convention on Civil and Political Rights Article 19 is fully observed, as EITI and civil society, including the media, cannot function properly without such guarantees.

Second, the EITI board should in a timely and rigorous manner undertake the assessment it is now starting under the working group on civil society participation. It should define 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.

One final recommendation to the Helsinki Commission and to the OSCE: The Helsinki Commission should press for the OSCE to endorse EITI and forge closer links between resource revenue transparency and human rights observance. The shared desire to hold an OSCE summit, for example, with meaningful outcomes, opens a door for discussion on resource revenue transparency with a view of an endorsement of the EITI by the summit.

Additional steps could include signing an MOU between the OSCE and the EITI; the economic and environmental coordinator could work on combating corruption; there could be a discussion at the parliamentary assembly and, as I suggested, the EITI could form a part of the summit agenda.

We join other members of the Publish What You Pay U.S. coalition in urging Congress to pass the Lugar-Cardin Energy Security Through Transparency Act. We believe that this would provide critical leadership in reference to a conversation which has taken place earlier in today's proceedings. I think it would set an excellent example for other countries, whether in this hemisphere or otherwise, that the United States is showing leadership in this area.

Thank you, Chairman Cardin. I am ready to answer your questions.

Mr. CARDIN. Thank you very much. Mr. Bokayev?

MAX BOKAYEV, CHAIRMAN, ARLAN

Mr. BOKAYEV. Thank you. I would like to thank the U.S. Helsinki Commission for 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 challenge being faced on the ground in a country where extractive industries play such an important role.

Today, I will share with you my views from my experience as NGO activist. Since 2003, I have been the Chairman of the NGO Arlan, based in Atyrau, the largest oil-producing region in Kazakhstan. We help citizens affected by extractive industries projects, to protect their rights to participation, access to information and access to justice. 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. Most of the largest oil companies in the world operate in Kazakhstan, such as Chevron, Exxon Mobil, ConocoPhillips, Shell, Total, and others. 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 allies 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 loan them 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 “Kazakhgate.” 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 American citizens, though several American activists addressed the U.S. Department of Justice on behalf of Kazakhstan. They requested to stop the proceedings, taking into account the strategic importance of U.S. relations with Kazakhstan.

In response to allegations of corruption by companies, the state-controlled bodies will be indifferent as specific state interests arise. In these cases, the state uses various pressing methods, starting with sponsorship extortion and ending with complete overhaul of countries. It is no surprise that Transparency International Corruption Perception Index gives Kazakhstan a score of 2.7 out of a possible 10, signaling the belief that public officials are corrupt.

Against this backdrop, the human rights situation in Kazakhstan has dramatically worsened. For example, in Atyrau region, 17 percent population doesn’t 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 six. In Mangghystau, another big oil region, the rural poverty rate is 63.5 percent.

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. 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 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. Given this context, it is not surprising that the government’s commitment to implement EITI and as a memorandum of understanding back in 2005 was received by civil society with great hope and enthusiasm.

I work 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 multi-stakeholder group, the National Stakeholder Council on EITI. The council is chaired by the wise 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.

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 an extension of the validation period by the EITI board.

Companies and NGOs have different perceptions of the meeting validation criteria. While NGOs are saying that the 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 countries' companies out of 7700 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 exception. However, even after 5 years, it is still impossible to say unambiguously that the transparency of payments has translated into concrete improvement and that it has made an impact on the positive development of civil society and human rights.

On the one hand, these 5 years of implementation of the EITI again proves that transparency in the extractive industries starts with transparency in the administrative, legal and judicial systems of the state. Under authoritarian regime 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 regional accounts.

But 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 raise 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 and social investment projects 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, government 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. 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, 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 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 the 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.

Mr. HASTINGS. Thank you very much. As all you can see, we were joined by the Chair of the Commission that I am fortunate to Co-Chair with. Senator, if you have any remarks you'd like to make or I'll go forward. I apologize for having to step outside; I went outside to meet with Egyptian generals so I didn't hear your testimony, Mr. Richter, but I did read it and I do compliment you. You've done something that almost helps to eliminate the need for hearings and that is you've given us recommendations of substantial import and I take them to heart, including passing the Cardin-Lugar transparency matter. But, Senator, if you would want to?

**HON. BENJAMIN L. CARDIN, CHAIRMAN, COMMISSION ON
SECURITY AND COOPERATION IN EUROPE**

Mr. CARDIN. Well, first let me thank Co-Chairman Hastings. I apologize to the witnesses—the Senate Committee on Budget was marking up the budget. It's one of the committees that does not use—we have to be personally present; we can't use proxies in that committee and there are usually a lot of partisan votes so it's required that we be personally present in the committee room during the entire presentation so I apologize for missing the testimony. We

did get the budget done—we passed it out, so that’s the good news. We’re moving forward on that.

The EITI and transparency is critically important in the—not only the OSCE region but globally. We are pleased that the initiative has gained a lot of interest and more countries are participating in it. However, it is a voluntary program and it is based upon transparency. There is no requirements in the program for fighting corruption.

So I think, Mr. Chairman, what I will do is yield to you for your questions, and then I have some questions that I would like to ask the panel of witnesses. To me, this is an extremely important subject.

We’ve had numerous hearings in the Foreign Relations Committee, including one today, dealing with global hunger and food security. And front and center in that hearing was whether there’s transparency in the U.S. participation with other countries that will set up the institutions within that country, that they can really do something permanently for food security. So whether it’s mineral wealth that has become a curse in so many countries—if you can’t get the wealth to the people, if you can’t get the food to the people, if you can’t share the wealth of the nation, then in reality, you’ll never be able to overcome the problems of the country.

And quite frankly, corruption is the cancer that has been eating away at the ability of so many countries to be able to use transparency and wealth—mineral wealth—to feed their people, to take care of the health needs of their people, to house their people, and to allow their people to have the opportunities that should be made available. So I really want everyone to know how important I think this subject is.

I will also raise, during my questions, that if you’re going to be able to deal with transparency, you have to have an independent press—independent journalists. And if journalists are intimidated or arrested or beaten up, you don’t have the transparency that’s implied in the EITI, and it doesn’t work. So all these things go together, and I think we need to have a coordinated effort along with transparency in the extractive industries.

Mr. HASTINGS. Thank you very much, Mr. Chairman. Mr. Richter, as I indicated to you, I had to leave the room, but I do have some questions that I would like to put to you now. A number of countries are outside the framework of EITI. And I guess the question is, what really is the hope of implementing transparency programs in countries that are so difficult? And I think you were here earlier, when Dr. Baer was testifying, and I identified three countries, at least, but there are more, that are on the list, that present the same kind of problem. So is there hope for implementing transparency programs?

Mr. RICHTER. Well, I think you, sir, Chairman Hastings, referred, earlier in your remarks, to Turkmenistan as a particularly difficult case, and this is one that we have also looked at. I think it’s a key point that, though Turkmenistan does not meet the EITI sign-up criteria, it’s still incumbent on governments, companies and civil society to push Turkmenistan to uphold and promote the same kind of principles.

One fact, which you probably know well, having visited under the time of Saparmurat Niyazov, that when he led the country, a staggering 75 percent of government spending was off budget. That has changed just a little bit under President Berdimuhamedow. But there's new opportunities for us to engage with the government of Turkmenistan. I could point, for example, to a new Turkmenistan Stabilization Fund which is being created.

The fund, if we have some advice to offer, should provide proper accounting of all the financial flows and disclose operations to the public. The fund should be audited by an independent body. Off-budget funds should be brought into supervision. These are—we have quite a number of specific recommendations for Turkmenistan. There's a question as to the leverage. Another area—

Mr. HASTINGS. What's the aegis for the fund? Under what aegis is—

Mr. RICHTER. I would have to—I'd be happy to respond in writing subsequently—find all the details about how the fund is being administered, in addition to some concrete suggestions on how to—

Mr. HASTINGS. But is this under EITI, or—

Mr. RICHTER. No, sir. It's a Turkmen Government—

Mr. HASTINGS. All right.

Mr. RICHTER. It's a Turkmen Government fund. I could offer you some details subsequently. The other area which relates, also, to U.S. energy security interests is the creation of the Nabucco pipeline. If the Nabucco pipeline gets built, Turkmenistan, as a supply country, would benefit from it, and if the United States is involving public moneys in the construction of the Nabucco pipeline, this would give us the standing to ask that these type of transparency principles be employed in Turkmenistan.

Those are a couple of specific examples—the stabilization fund, the Nabucco pipeline—where we might have some leverage, some sway. Sir, you also referred to Uzbekistan, which is another particularly troubling and difficult case. I believe yesterday, or quite recently, a long-term arrangement was signed between Uzbekistan and the Russian Federation committing volumes of natural gas in that direction. But instead, I think that not all of our interest in transparency should be directed toward those type of natural resources.

In Uzbekistan, there is a dreadful problem with mass, state-directed use of child labor in the cotton fields. Each fall, according to well-researched reports, some 1.5 to 2 million school-age children, for months at a time, are sent to the cotton fields in hazardous environmental conditions, earning a bare pittance. And that cotton is then exported by state-controlled agencies abroad.

Tracing the destination of that cotton through their production line of various garment-makers is one of the projects that's been undertaken by a group of companies and civil society groups, both in Europe and the United States that are interested in this, with the aim, ultimately, of getting the Government of Uzbekistan to come to the International Labor Organization and get the type of assistance that would be available to them under that framework. So if we're interested in transparency and human rights, there are,

in the case of Uzbekistan, albeit not in the natural resources sector, there is something that we could sink our teeth into.

Mr. HASTINGS. Well, in the interest of time, I will only ask you an additional question, and that's how we increase, in non-Western countries, their effect on the discussion of transparency and human rights. You know, I've left Russia off the table. I did, with Dr. Baer, mention China. But what arguments would we use with the non-Western investors and governments to help convince them that they should also be interested in seeing that human rights are respected in countries where they invest? And I might add, not only countries where they invest, but within their own confines of their sovereigns?

Mr. RICHTER. Sir, I'll try to be more concise on this one. I think that when one is looking at some of the non-Western countries, I don't believe that it's necessary, in the case of something like EITI, to invoke a human rights argument. There are other arguments which are in favor of implementing EITI which are equally persuasive, because these are, after all, companies that are interested in the bottom line.

I think companies from non-Western countries are equally interested that corruption not diminish their bottom line. I think that they, equally, with Western countries, understand that transparency reduces risks and increases predictability in their business operations, that there are cheaper costs of capital when financing a project that's transparent, as opposed to one that's opaque. And finally, I have been pleased to notice, in countries such as Afghanistan, which has recently joined as a candidate to the EITI, and in other countries, that non-Western companies observe the rules of the road.

If EITI is the law of the land—if these are the rules of the road—they're going to follow them. And so there's a whole number of reasons why, including that it's just the way things are done there. And that's the way we mainstream the transparency way of doing business. And I think it applies to all companies.

Mr. HASTINGS. All right. I thank you. Mr. Bokayev—and I'm told that you—well, first, you made an excellent presentation in English, but if you're uncomfortable, I'm told that you do have a translator/interpreter with you, and certainly, we would be glad for that if needed. But Kazakhstan is ranked as “not free.” And certainly, that case is made often by Freedom House and the survey that they conduct on political rights and civil liberties. You have been very active. What is your experience, if any, with reference to censorship of your activities in Kazakhstan?

Mr. BOKAYEV. Because of my humble English, I need some help from my colleague. Anthony, please help me.

Mr. RICHTER. He might have me back on the microphone again. I offered to help him with Russian.

Mr. HASTINGS. Give him time to translate some of it.

Mr. BOKAYEV [through interpreter]. Thank you, sir. As such, I haven't experienced censorship personally, however it should be said that all of the mass media are under the state. There are, however, independent oppositional media, but they are mainly just in print, and there is a need to bolster media in television and radio.

Mr. HASTINGS. All right. Go ahead.

Mr. BOKAYEV [through interpreter]. There are cases, though, when a court can detain an entire print run of a newspaper—for example, when they touch on the interests of a highly placed person. So there was an article about the alleged corrupt activities of one of the oilmen, Mr. Kulibayev, and as a consequence, the print runs of three newspapers were seized.

Mr. HASTINGS. All right, I thank you very much. In the interests of time—we were supposed to run until 4 and I don't want to hog up all the time—so I'd ask the Co-Chair if he will go forward at this time. Mr. Gary, if you and Mr. Bokayev would be so kind, I would like to submit to you a few questions in writing, and if you would follow them up, then we will post them on our Web site, as well.

Mr. GARY. Be happy to.

Mr. HASTINGS. All right. Senator?

Mr. CARDIN. Well, again, let me thank all three of you for being here. I found your testimony to be very helpful, in trying to put this in context. I'm trying to get an understanding as to how effective the EITI initiative has been. It is, to me, fundamental for transparency that, that should—at a minimum, we need to have that type of information if we're going to build good governance in a country. So I find that to be, I guess, a basic.

My question—Mr. Gary, let me get you involved here, at least first—is, I'd like your honest assessment, as to those countries that are participating—I know it's at different levels at the EITI—how effective has transparency been in improving governance in those countries? Are we making progress with the countries that are participating?

Is there a need for us to look at a more enforceable framework, beyond the EITI? This is particularly important where you can have partnerships with countries where you may have some leverage as to what they are willing to do. So there may be some opportunities, or there are international organizations that could start down the path of a more enforceable arrangement.

And then I would like you to sort of give me your view as to how important, for effectiveness of an EITI initiative, the institutions of a free press and the ability to fight corruption—whether we've been able to see any of the connecting of the dots between transparency and effective fighting of corruption. I know that's a list, but I would appreciate your assessment as we look at not only expanding the EITI, which we plan to do, but perhaps strengthening the EITI.

Mr. GARY. Well, I think your question gets to the core of the issues. And I think, as I described in my testimony, we've sort of come to a point where transparency went off on one track and human rights went off on another track. And we need to bring the tracks back together. And so one of my recommendations was that the U.S. Government, in resource-rich countries, needs to have an integrated strategy related to transparency, human rights and anti-corruption—so to bring those strategies together.

In many countries, you will have EITI practice, but the United States will not be enforcing or moving toward a human rights strategy at the same time. So if you take the case of Equatorial Guinea, EITI implementation, going forward, at least on a tech-

nical level, NGOs extremely circumscribed in the type of activities they can undertake.

They have to register with the Minister of Interior. They can't hold public meetings without prior permission. There's no free and independent broadcast media. Yet, at the same time, while EITI was being implemented, we welcomed the president of Equatorial Guinea, a few years ago, to the State Department for meetings with the secretary of state.

So I think one answer to the question is that we have to have carefully calibrated diplomatic engagement and incentives put in place to improve human rights practice while we're looking at transparency practice. I also think that there are some countries that will never sign up to EITI. And there are some countries that are implementing EITI, but only at its most basic level. As we've heard, in some countries, EITI reporting happens on an aggregated level. In other words, a lump sum is disclosed, rather than company-by-company payments. That's the case in Kazakhstan.

All the companies that Mr. Bokayev mentioned—Western companies, like Exxon and Chevron and Shell and BP, Total, and ConocoPhillips, for example—all of them would be covered by this Energy Security Through Transparency Act. And so if that act were to become law, colleagues of Mr. Bokayev and his organization would have disaggregated payment information. So in addition to having EITI, we need to have other types of regulations, and a cocktail of measures, I think, is important.

To the question of freedom of press and active press, I think this is essential. I've seen, on the ground in Ghana, where EITI reports were made public and then, in Ghana, where you have independent radio stations, you have independent newspapers, you have community radio, and the NGOs that work with the journalists, who train the journalists and train parliamentarians about the importance of information and what it means, and what the EITI reports are saying and what types of improvements the government has to make.

For example, in Ghana, it came out that the government wasn't collecting the kind of taxes that it could be collecting when a mine changed hands from one company to another. Many opportunities for revenue were being lost, and journalists were able to highlight that. So wherever there are countries where transparency is taking place, but there really isn't any civil society or journalists on the ground to be able to use that information, you're really having, as I mentioned in my testimony, really, sort of a Potemkin village, or spectacle of good governance and transparency, rather than moving anything forward.

Mr. CARDIN. Mr. Richter, do you want to join in this, as to—appreciate your observations as to whether there's hope that we can get some coordination here. I think the point that Mr. Gary mentions about coordinated strategy makes sense. We don't want a country to join EITI for cover; we want them to join EITI as part of a commitment for good governance.

And yes, we want to put pressure on them to move forward in the EITI as part of good governance. So it's—but if you just say, OK, sign the papers and we're done with you, and then you can lock up your journalists and you can prevent the information from

being useful and you have a corrupt society, you're not really accomplishing much by being a member of the EITI.

Mr. RICHTER. Thank you, Chairman Cardin. First of all, I'd like to agree broadly with what my colleague, Ian Gary, has said about an integrated approach. It really is the case that we need to bring to bear both the capacities of a DRL—the bureau of democracy rights and labor—together with that part of the U.S. State Department, which is energy, which is dealing with this issue.

And whether you see it as an energy issue or whether you see it as a rights issue, I think, makes a good bit of difference. We don't necessarily need to choose, but we ought not to stovepipe, either. There ought to be a kind of common approach. There are other initiatives at the State Department—I believe the international energy advisor, David Goldwyn, has a new energy governance and capacity initiative which has been launched. So there really are opportunities and there's a crying need to work on these things together.

I'm not sure whether this was seen earlier, but we put together a list of the EITI countries' record of adherence to international human rights and governance norms. So here's a case where the two bureaus can get together and say, look, these people have an atrocious human rights record. How come they don't sign up to OPCAT or how come they don't have a freedom of information law to improve their governance? How do we work together to bring about the optimal result?

On the question of whether EITI is working, I think that, you know, this is such a complicated initiative that it's clearly going to take a while—and it's going to take a while after validation has taken place—to know. It's not too early to say that in a country like Liberia, for example, where you've had a very progressive version of EITI, innovative, with disaggregated reporting, where they caught an embezzler in the first report that they published because of this disaggregated reporting—someone who had walked off with, I believe, about \$150,000. And that came out. That's a really great example of what it can be when the EITI has that ownership and leadership from the country.

But I also would agree with what Ian Gary said, that we're in favor of a blend of approaches. That's why we're so grateful for your leadership, sir, with the Lugar-Cardin ESTT. But we're also looking at a range of other interventions. The International Accounting and Standards Board is putting out new guidelines for discussion, which one would hope would have an effect of bringing to light those country payments. Work with ratings agencies, also, is another way of using the market system and the system of pricing risk to value more highly transparency. So there are carrots; there are sticks; and we're all for using the full range of tools at our disposal.

Mr. CARDIN. Thank you. Mr. Bokayev, we very much appreciate you being here, first of all. I just really want to thank you for your testimony. It's important that we can hear, directly, what's happening in Kazakhstan. You know, we're all proud of some of the major achievements in Central Asia that Kazakhstan has led. They have the presidency of the OSCE. It's a major step forward for the people of Kazakhstan and the people of Central Asia.

We think Kazakhstan has implemented some reforms that are important. But it's our impression that if you were to publish—if you could get published—a critical analysis of the Kazakh Government's handling of mineral issues in the country, that your safety could very well be jeopardized. Is that impression correct?

Mr. BOKAYEV [through interpreter]. If I understood the question correctly, are we under any kind of direct pressure for our work on EITI? And the answer is no, but in respect of pressure, in the recent elections, several journalists had cases fabricated about them, and they were—that they had some corruption problems—and they were dealt with very harshly. And then of course, there's the case of Yevgeny Zhovtis, known to all of us. And these are really shameful cases.

So at present, for example, there's an effort to find out from national state companies about, say, their environmental record, and trying to get information from them can be quite difficult. And we sense that we're being pressed to back off when we want to get from state-owned companies this type of information that's in the public interest to have.

Mr. CARDIN. Thank you. I appreciate your response. Again, I appreciate all three of our witnesses. This is an issue that the U.S. Helsinki Commission has raised internationally, and will continue to do that. And it's a matter that the United States State Department has made a very high priority. So it's an area that we intend to continue to follow. And I think the hearing today has given us a lot of information that will be useful in our work. So thank you all very much.

Mr. HASTINGS. Thank you very much, Senator and Chairman. And gentlemen, I echo those sentiments, as well. I'd also like to thank our persons who have been so patient, that sit in the room and have something to say, and I'm just talking about the persons who have come to the hearing. It's deeply appreciated. One of the things that I find disconcerting, as a policymaker, is when we go to a hearing, like this one and many others all over the Congress, people sit in the audience that have a substantial amount of information that they would like to contribute.

And I've tried to find a way to have that happen, and the only thing that I know is to encourage you to go to our Web site and that you undertake to feed into it, on any of the particulars that were brought forward here, ideas that you may have. But I thank you for your patience, and for all of you being here. And certainly, I thank our witnesses as well. This concludes our hearing. Thank you so very much.

[Whereupon, at 4:05 p.m., the hearing was adjourned.]

APPENDICES

PREPARED STATEMENT OF HON. BENJAMIN L. CARDIN, CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Good afternoon and welcome to the Helsinki Commission hearing on “The Link between Revenue Transparency and Human Rights.” Over the past few years, I and my Commission colleagues, particularly our Co-Chairman Mr. Hastings, have actively worked to make revenue transparency an integral part of U.S. foreign policy and also to encourage revenue transparency among the 56 participating States of the Organization for Security and Cooperation in Europe (OSCE).

Transparency in financial transactions has taken on even greater importance as the world economy suffers from tremendous setbacks. The financial crisis means that the reduction in international prices for oil, gas, metals and minerals translates into a decline in government revenues in commodity dependent economies. So as revenues decline, we have seen the need for greater transparency as companies and investors have become increasingly risk-averse and preferential to markets with a stable and transparent business environment; in addition to the need within these resource rich countries to boost their ability to spend wisely on behalf of their citizens.

Recently, Senator Lugar and I introduced in the Senate the Energy Security Through Transparency Act, a bill that would create a new transparency standard for reporting of extractive payments to governments. It would also advance U.S. efforts to promote good governance of extractive industries through increased transparency at home and abroad. We have bipartisan support with 13 co-sponsors, so I’m looking forward to moving the bill forward soon.

But action in the U.S. is not enough. It’s clear that we need a concerted effort by the international lending institutions to use their leverage in order to create more accountability. This weekend the World Bank and the IMF are holding their Spring Meetings, and transparency certainly will be on the agenda. In particular I hope to see the promotion of sustainable and responsible investment in extractive industries around the world, with clear expectations for good governance.

The Extractive Industries Transparency Initiative, or EITI, is a unique mechanism aimed at increasing transparency and accountability, and I personally think EITI has brought us light years ahead in terms of creating a global standard for transparency. But revenue transparency is just one step in the process, and we need to not lose sight of the ultimate goal—and that is less corruption and better governance.

Transparency in and of itself does not necessarily lead to better governance.

In today’s hearing I want to take a look at how we can take those next steps that will lead us to better governance and improved human rights.

One of the key components of EITI is the development of civil society and a free media—but frankly in the early stages of EITI implementation we see little progress on civil society and media, the folks who will be the watchdogs in this process, despite a strong emphasis on getting the disclosure mechanisms in place.

The OECD—and common sense—tells us that lack of press freedom is one of the key factors enabling corruption to flourish. Development of civil society and a free and independent media are therefore key pre-conditions for improving human rights, but unfortunately the trend for press freedom and civil society in many of these countries is not positive. In today's hearing I hope we can explore how we can move forward with the tools we have in place now, perhaps ways we can improve the EITI process, but also discuss what other steps we should be taking to advance human rights.

I'm pleased that we have an excellent panel today who will give us their perspective on this issue. The witnesses bios have been distributed so let me simply introduce our first speaker, Mr. Daniel Baer, Deputy Assistant Secretary for Democracy, Human Rights and Labor at the State Department. On our second panel, first we'll hear from Mr. Ian Gary, the Senior Policy Advisor for Extractive Industries, with Oxfam America; then Mr. Max Bokayev with Arlan, an NGO from Kazakhstan; and finally, Mr. Anthony Richter, Chairman of the Governing Board of the Revenue Watch Institute.

PREPARED STATEMENT OF HON. ALCEE L. HASTINGS, CO-CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Thank you, Mr. Chairman. According to Transparency International, six of the top ten oil-exporting countries to the United States are among the most corrupt countries in the world. A lack of transparency within governments and the energy sector poses a threat to both energy exports and the ability of governments to properly manage revenue for their citizens. These governments are not accountable to their citizens and have taken advantage of national resources in pursuit of the self-interest of a few corrupt leaders. Oil and gas companies have generated enormous revenues for a number of countries, yet rather than improving the lives of ordinary families, this money has often fueled wars and corruption, weakened economic development and worsened poverty.

One of the key ways the international community has sought to counteract the political and economic instability inherent in the resource curse is through programs that seek to instill transparency and accountability into the resource payment system. EITI is the leader in this field.

Corruption in these nations not only affects the citizens of those countries, but it comes back to us squarely here in the U.S. and Europe in terms of energy security. Here's the linkage: corruption and kleptocracy in resource-rich countries lead to political instability, drive up oil prices, and present significant risks to U.S. investments. As citizens in oil-producing countries become disgruntled with governments and foreign investors whom they believe to be corrupt, these citizens can foster political unrest and threaten oil supplies. And we haven't begun to talk about the incredible human toll in countries where citizens are deprived of basic services while the government leaders build up their offshore bank accounts.

Each of the countries we are talking about today—whether it be Russia, Kazakhstan, Turkmenistan, Uzbekistan and Azerbaijan—face some aspect of this resource curse. And while the situation in each country is unique, we can generalize and say that the lack of transparency in politics, and in oil and gas deals, is at the root of many of their social problems.

EITI is a good first step, but I am concerned that with regard to civil society and the free press, we may be stopping far too short of the finish line and declaring winners before we've completed the race. I am looking forward to hearing today's witnesses, and I hope that they will address how the situation in some of the recently validated countries, such as Azerbaijan where we see continued assaults on freedom of speech and on civil society, bodes for the future of EITI implementation.

Thank you.

**PREPARED STATEMENT OF HON. CHRISTOPHER H. SMITH,
RANKING MEMBER, COMMISSION ON SECURITY AND CO-
OPERATION IN EUROPE**

Thank you, Mr. Chairman, and welcome to everyone joining us this afternoon.

Government corruption, including but not only in extractive industries, damages the political culture of many countries, and contributes to the impoverishment of millions of people. It is a grave problem, and it leads to many human rights violations, as when officials accept bribes to take people's property and give it to mining companies or developers—this is a very common occurrence in many countries—or connive at the murder of journalists investigating corruption.

Corruption is a form of theft, and, while laws and intergovernmental processes will never completely eradicate it, we have seen that good laws and determined efforts can reduce corruption, and foster more honest political and business cultures. One of the great success stories in this respect has been our own Foreign Corrupt Practices Act. When Congress was debating the bill, its opponents said it would not reduce corruption but only decimate U.S. international business in favor of rival countries. It didn't do any such thing, and, gradually, other countries have moved toward accepting the norms first established by the FCPA. Such norms have also been promoted, for example, by the Parliamentary Assembly of the OSCE PA, at its 2000 meeting in Bucharest, and, in a different way, by H.R. 557, legislation which I co-sponsored and which will stop U.S. funds from bankrolling UN Corruption.

Mr. Chairman, there are serious reasons to doubt whether some of the most important current transparency initiatives, including the Extractive Industries Transparency Initiative (EITI), have been effective. The EITI's members and candidate members include some of the most corrupt and repressive governments in the world—governments whose willingness to permit EITI procedures to genuinely root out corruption one may well question.

I look forward to learning from our witnesses about the successes and failures of transparency initiatives, and to discussing what role our government can play in improving them. Thank you, Mr. Chairman, for calling this hearing.

PREPARED STATEMENT OF DANIEL B. BAER, DEPUTY ASSISTANT SECRETARY, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEPARTMENT OF STATE

Good afternoon Chairman Cardin and distinguished Members of the Commission on Security and Cooperation in Europe. I appreciate the opportunity to appear before you today and to speak on the link between revenue transparency and human rights in resource-rich countries, within the context of the efforts of the Department of State to support civil society and to promote human rights globally.

THE “RESOURCE CURSE”

Today over 50 countries representing three and a half billion people are considered rich in natural resources such as oil, gas, and minerals. However, nearly half of the 3.5 billion in resource rich countries live on less than \$2 / day. This fact presents an obvious puzzle: if the countries are resource rich, why are their people so poor?

As you probably know, one explanation for this puzzle is what development economists have called the “resource curse,” a theory that explains how apparent abundance can lead to economic underdevelopment and, in many cases, armed conflict.

The resource curse phenomenon results from a confluence of related factors which tend to accompany natural resource wealth. Resource revenues lead to the appreciation of national currencies, negatively affecting non-resource exports and causing a decline in those industries. Countries excessively dependent on resource revenues find themselves particularly vulnerable to price swings in commodity markets. Research has shown that government dependence on resource revenues can also undermine the responsiveness of state institutions and the ability of citizens to hold governments accountable, especially when information is closely held in the hands of a few. When accountability mechanisms are weak, opportunities for corruption increase and non-tax revenues are easily diverted from state budgets, reducing social expenditures and damaging the credibility of the government. Dissatisfaction with corruption or non-transparent allocation of resource revenues, combined with the negative effects that resource dependency has on broader economic development, can give rise to tensions—often refracted through other social divisions like ethnicity or religion—that strain and tear the social fabric of a country. Tragically, in some cases, we have seen that natural resources can then become a source to finance militias, leading to armed conflict and assorted human rights abuses.

The sustainable and responsible management of natural resource wealth is a complex challenge, one that defies easy solutions. There are no “silver bullets”. Decisions about how to manage volatile revenue flows so that natural resources can become a basis for social investment and sustained economic growth are difficult, even when all the facts are on the table. In reality many of the facts have often been hidden: revenues from resources are often unknown by citizens, controlled by an opaque group of government leaders, and dispensed without consultation or a transparent process, a fact that

exacerbates the challenges and negative consequences associated with the resource curse.

Secrecy contributes to and enables poor governance. Transparency and accountability in the management of natural resources can help counter corruption, improve governance, and foster economic growth. Transparency is not a panacea, but it is an important first step, it is a way of putting more of the facts on the table.

CORRUPTION AND HUMAN RIGHTS

It is no coincidence that countries where corruption is prevalent often exhibit poor respect for human rights, as illustrated in the most recent edition of the State Department's Country Reports on Human Rights Practices. It is thus important to underline the link between corruption and human rights, as well as the key role that civil society can play in fighting corruption and promoting respect for human rights.

International human rights conventions make clear the obligation of governments to ensure respect for human rights. As organizations such as Transparency International and the International Council on Human Rights Policy have underlined, corruption corrodes a government's ability to protect human rights and to ensure its own respect for human rights. Combating political and judicial corruption is a key element in a government's ability to promote and protect civil and political rights. Transparency and access to information empower individuals to make informed decisions—from exercising their voting rights to monitoring how state expenditures are spent. Endemic corruption can conversely obstruct law enforcement and judicial processes.

Fighting corruption has long been a central element of U.S. foreign policy. As President Obama said during a July 2009 speech in Ghana, "corruption is still a daily fact of life for far too many we have a responsibility to support those who act responsibly and to isolate those who don't, and that is exactly what America will do." As far back as 1977, the United States enacted the Foreign Corrupt Practices Act and made it illegal for U.S. citizens to bribe foreign officials for the purpose of obtaining or retaining business. The U.S. was similarly the principal force behind the 1997 OECD Anti-Bribery Convention, and the UN Convention against Corruption.

In our annual Country Reports on Human Rights Practices, we have in recent years increased efforts to highlight the link between human rights abuses and the lack of accountability surrounding the extraction of natural resources. Our reports have underlined that in countries where citizens lack the right to access government-held information and where corruption in the extractive industries remains a serious problem, transparency activists, NGOs, and journalists have been subject to harassment, arbitrary arrest and detention and even death threats for investigating and reporting corruption allegations. Our reports also underline the same link to trafficking and labor rights abuses, including the use of forced child labor in unsafe mines.

PROMOTING TRANSPARENCY AND ACCOUNTABILITY

Our reporting informs our policy. As President Obama said in Ghana last year, “what America will do is increase assistance for responsible individuals and responsible institutions, with a focus on supporting good governance [including] on concrete solutions to corruption, like forensic accounting and automating services, strengthening hotlines, [and] protecting whistle-blowers to advance transparency and accountability.” In the Bureau of Democracy, Human Rights and Labor, for example, we are examining ways to increase support for transparency promotion efforts in African countries, including for programs that train journalists on corruption investigations and build the capacity of NGOs and government regulatory agencies to monitor supply chains and curb trade in conflict minerals. We also continue to provide urgent assistance to local NGO activists, including transparency activists, who are under threat from repressive governments. In U.S. transparency promotion efforts, partnerships with and support for civil society are central. Civil society can play a key role in fighting corruption of all kinds, but only if governments respect their obligations to give it proper space.

Civil society can be a particularly powerful force for citizens when working with companies and governments in multi-stakeholder initiatives in efforts to increase transparency and respect for human rights. When done right, multi-stakeholder initiatives can create a transnational advocacy network led by a group of governments, NGOs, and corporate entities that collaborate to establish common standards, predictable accountability mechanisms, and institutionalized sharing of best practices.

The subject of today’s hearing, the Extractives Industry Transparency Initiative (EITI) is a prime example. NGOs gave the initial push toward greater resource transparency. Then, at their summit in Evian in 2003, G8 leaders agreed on an action plan that included piloting, on a voluntary basis, an intensified approach to transparency in countries where revenues from extractive industries (oil, gas and mining) are important. The EITI Principles were subsequently agreed at a conference at Lancaster House in London. Other important multi-stakeholder initiatives having direct bearing on extractive industries include the Voluntary Principles on Security and Human Rights and the Kimberley Process, and I would like, briefly, to address these initiatives.

Voluntary Principles on Security and Human Rights (VPs): Established in 2000, the main purpose of the Voluntary Principles is to provide guidance to companies in extractive industries on how to improve the protection of human rights, with particular emphasis on the relationships between companies and both public and private security forces. Seven governments, 17 companies, and nine NGOs participate formally in the VPs process. Last month, Assistant Secretary Posner and I traveled to London for the annual plenary meeting of the VPs, which coincided with the beginning of the United States’ year-long chairmanship of the VPs Steering Committee. The VPs process has many strengths, and opportunities for future enhancements include improving and standardizing governance, accountability and the sharing of implementation

best practices. To that end, our goal as chair is to lead a transformational process that strengthens the VPs as a results-oriented effort that delivers clear value for all participants and has greater impact on the ground. Ultimately, the more the VPs are implemented, the more stable the operating environments for the extractive companies and local communities will be, leading to better governance overall.

Kimberley Process (KP): The Kimberley Process is a multi-stakeholder initiative launched in 2003 to certify the origin of rough diamonds from conflict-free sources, with the aim of preventing rebel groups from financing their efforts through the sale of “conflict diamonds.” The KP now includes 75 countries and includes industry and NGOs as observers. The KP is credited with helping to reduce the trade in conflict diamonds to less than one percent of the world’s total rough diamond trade. The approach taken through the KP certification scheme is to control international trade in rough diamonds through the adoption of domestic systems that make the rough diamond trade more transparent and secure. The U.S. plays a very active role in the ongoing work of the KP, which does not have a permanent secretariat or staff. A principal focus of attention for the KP at present is Zimbabwe, because of its Marange diamond fields which have been the scene of extensive smuggling and violence. As these discussions continue, we continue to promote the critical role of respect for human rights in the administration of KP participants’ diamond mining sectors.

Extractive Industries Transparency Initiative (EITI): Established in 2003, the Extractive Industries Transparency Initiative aims to improve fiscal transparency through revenue reporting. The EITI calls for full public disclosure and verification of oil, gas, and mining company payments to host governments and of the host governments’ budget revenues from these industries. The EITI is a voluntary process that brings together governments, businesses, and civil society organizations. The EITI provides a set of uniform criteria against which each implementing country is assessed in a validation process. Criteria include assessments of the quality and accuracy of payments reporting, and of the ability of civil society to engage in the process.

Currently 29¹ EITI Candidate Countries are implementing EITI, and two other countries, Liberia and Azerbaijan, have recently completed the validation process and have been declared compliant. Each of the remaining candidate countries is in various stages of implementation, undertaking a multi-step process to strengthen revenue transparency.

The United States has been a strong supporter of greater transparency in the extractive sector, in government procurement, and in concession-letting. Additional supporting donor countries of the EITI include the UK, Germany, Canada, and others. A representative from the State Department’s Bureau of Economic, Energy and Business Affairs participates in EITI board committees. In September 2009, the United States joined the World Bank’s EITI trust

¹Afghanistan, Albania, Burkina Faso, Cameroon, Central African Republic, Chad, Côte d’Ivoire, Democratic Republic of Congo, Gabon, Ghana, Guinea, Iraq, Kazakhstan, Kyrgyzstan, Madagascar, Mali, Mauritania, Mongolia, Mozambique, Niger, Nigeria, Norway, Peru, Republic of the Congo, Sierra Leone, Tanzania, Timor-Leste, Yemen and Zambia.

fund facility with the contribution of \$6 million of USAID funds. The U.S. is the second largest donor to the facility and sits on the trust fund facility Management Committee. The trust fund assists country-level multi-stakeholder efforts and is preparing to provide assistance directly to civil society for capacity building in EITI implementing countries. The U.S. also provides direct bilateral support to many resource-rich countries world-wide including in public financial management, procurement reform, legislative oversight, justice sector reform, budget transparency, expenditure tracking, access to information, and civil society strengthening. The U.S. has provided bilateral assistance specifically designated for EITI implementation in Peru, Nigeria, and the DRC.

As I mentioned above—the EITI was founded on the basis of an initiative by civil society, and one of EITI's strengths is the significant involvement of civil society, including human rights organizations. And while its primary purpose is supporting revenue transparency, this ongoing inclusion of civil society is an important feature of the EITI. Among the criteria for candidate country implementation is ensuring that “civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.” Candidate countries are directed to work closely with civil society as they design work plans and to include civil society in a country-level multi-stakeholder group to implement EITI. Furthermore, governments are expected to remove obstacles to EITI implementation, which could include restrictions on civil society's right to associate, express opinions publicly, and access information free of undue influence or coercion from the government.

As I said, last year, Liberia and Azerbaijan became the first two EITI countries to complete the EITI validation process and be certified as compliant. In both cases, the full implementation of EITI principles represents an obstacle for corruption and a step forward for transparency and for the promotion of the right of citizens to access government-held information, a right enshrined in the Universal Declaration of Human Rights. Also, six new countries became EITI Candidates, and a significant number of other countries either declared their intention to implement the EITI or were engaged in outreach conversations through the EITI Secretariat. On the industry side, the number of EITI-supporting extractive companies increased during 2009 to 45.

This year, the EITI has made additional progress in expanding participation and fostering a climate of disclosure. During the April Board meeting in Berlin, Chad was accepted as an EITI Candidate Country after having met the four required initial indicators. In the Democratic Republic of the Congo, where the illegal trade in minerals continues to fuel conflict in the east, the government released its first EITI report in late March, marking the first time that tax revenue figures from the country's natural resources have been made publicly available. In Gabon, the EITI has been a stepping stone for civil society's engagement on transparency and accountability issues, providing a platform for discussing challenges in the development and management of natural resources and enabling civil society to engage in public debate on revenue management, previously a very sensitive subject. In Peru, the government

published the country's first EITI report in November, and in December it hosted other Latin American countries, including non-EITI but resource-rich countries, for a workshop to discuss measures to improve transparency in the extractives sector. In Liberia, the momentum behind EITI extended into other sectors, as the legislature passed a Public Financial Management Act, designed to reduce financial mismanagement and increase accountability.

The EITI in itself is not sufficient to eradicate corruption associated with the extractive industries. It is not a substitute for open and participatory budget processes. However, it can be an essential part of the solution, and it represents an important step. The multi-stakeholder approach of the EITI is creating a platform for dialogue and engagement which previously did not exist in many countries, and the EITI reporting process is generating data on revenues that were either not available previously or difficult to access. As we proceed, we will work to ensure that the participation of civil society is preserved and that the implementation of EITI continues in a way that bolsters the credibility of the initiative.

THE ROAD AHEAD

The still to be completed process of implementation for the EITI candidate countries points to the challenges ahead. Stepped-up efforts will be necessary to ensure that EITI principles are translated into reality. In a recent meeting in Berlin, the international multi-stakeholder Board of the EITI granted the request of 17 Candidate Countries currently working toward becoming EITI compliant to extend their deadline for completing EITI validation. The Board did not approve the request for a deadline extension from Equatorial Guinea, and Sao Tome and Principe's application for a voluntary suspension also was not approved.

In the longer term, we will continue to emphasize the benefits of enhanced fiscal and budgetary transparency, including through EITI and similar multi-stakeholder initiatives to all participants: reduced corruption, better governance, increased transparency and openness, more accountability, an improved investment climate and greater respect for individual rights. As Secretary Clinton has stated, sunshine is the best disinfectant.

Many resource rich countries are faced with challenges that they cannot address alone. We remain committed to exploring opportunities to work with committed resource rich countries improve revenue transparency for the long-term benefit of their citizens, and to protect and promote human rights.

Thank you.

**PREPARED STATEMENT OF IAN GARY, SENIOR POLICY
ADVISOR/MANAGER EXTRACTIVE INDUSTRY, OXFAM AMERICA**

INTRODUCTION

First, let me thank the members of the US Helsinki Commission for their interest in this important issue and for providing Oxfam America the opportunity to testify. In addition, I would like to thank Senator Cardin for his leadership on natural resource and transparency issues.

This hearing is a timely opportunity to assess the progress made in the last decade on improving human rights and development outcomes of resource-rich countries. Oxfam America is an international humanitarian relief and development agency that has worked to address the problems of many natural resource-rich developing countries for more than 10 years. We are a member of the Oxfam International confederation that operates in more than 100 countries. Our program on extractive industries focuses on the social, environmental and financial impact of oil, gas and mining operations in a dozen countries in Latin America, Africa and South East Asia. Our work includes support to community-based groups directly impacted by these operations as well as local watchdog groups participating in the Extractive Industries Transparency Initiative (EITI) and other reform efforts at the national and international level.¹ In the US, Oxfam America's Washington advocacy office works with companies, international financial institutions such as the World Bank, and the US government to promote policies that protect the rights of citizens in resource-rich states. Oxfam America is also a member of Publish What You Pay, a coalition of human rights, development, environmental, faith-based and anti-corruption groups that helps citizens of resource-rich developing countries hold their governments accountable for the management of revenues from the oil, gas and mining industries.²

THE PROBLEMS OF RESOURCE-RICH STATES

The IMF has identified more than 50 countries as “resource-rich” and more than 1.5 billion people live on less than two dollars a day in those resource-rich countries.³ Many of these countries exhibit classic signs of what has been called the “resource curse”, including underdevelopment; corruption and mismanagement of financial resources; political authoritarianism and weak or absent political accountability mechanisms; conflict; and human rights violations. These issues were not a prominent part of the international development agenda for decades, but within the last 10 years international non-governmental organizations (NGOs) such as Oxfam,

¹ EITI is a voluntary international initiative designed to increase the transparency of payments from oil, gas and mining companies to host governments around the world. EITI is governed by an international board and operates through “multi-stakeholder working groups” in EITI implementing countries. For more information on the principles, criteria, rules and membership of EITI see www.eiti.org

² www.publishwhatyoupay.org

³ The criteria used by the IMF is “an average share of hydrocarbon and/or mineral fiscal revenues in total fiscal revenue of at least 25 percent during the period 2000–2005 or (ii) an average share of hydrocarbon and/or mineral export proceeds in total export proceeds of at least 25 percent”, IMF, Guide on Resource Revenue Transparency (2007) <http://www.imf.org/external/np/pp/2007/eng/051507g.pdf>

Human Rights Watch, Global Witness, Revenue Watch Institute, Catholic Relief Services and many other courageous groups in developing countries have called attention to the tragic irony of extreme poverty in countries with abundant natural resource wealth. These groups have identified secrecy in extractive industries as a major obstacle to reform. In many countries, contracts between foreign firms and host governments are shielded from public view and there is little information about payments from companies to governments. In addition, governments are often not providing their citizens with accurate, timely and complete information about government budgets and expenditures. Addressing these transparency gaps has been at the heart of the international reform agenda.

TRANSPARENCY REFORM EFFORTS—LOSING SIGHT OF THE BIGGER PICTURE?

Most agree that improving transparency in the extractives sector is a necessary, but not sufficient ingredient for reforming the management and use of extractive industry revenues. Starting in 2002 after the establishment the Publish What You Pay campaign, the EITI has been seeking to increase transparency in resource-rich states. It took several years for this voluntary, multi-stakeholder process to agree on the rules for membership and implementation of EITI. These rules include the active participation of civil society groups—along with government and industry—in country-level working groups. While transparency and the efforts of EITI are an important first step, it has taken a long time to make progress and many policy makers and participants have lost sight of the bigger picture. The transparency agenda does not work without improvements in political accountability mechanisms, including basic human rights such as freedom of expression and association. As I will highlight, in some countries there is a yawning chasm between limited progress on transparency and little or no progress on human rights. EITI must not just be a technocratic exercise of publishing numbers. Otherwise, we may end up with the creation of a “Potemkin village” of good governance designed for donor consumption while underlying problems of political accountability remain unaddressed. The US government and other countries supporting EITI implementation must develop accompanying strategies and initiatives to improve the human rights situation in these resource-rich countries and to increase oversight opportunities related to government expenditures. Otherwise, “successful” implementation of EITI may have the perverse effect of masking these underlying problems.

DOES EITI CONTRIBUTE TO INCREASING DEMOCRATIC DEBATE AND IMPROVING HUMAN RIGHTS?

In 2008, the first 22 EITI “candidate” countries were given a deadline of March 9, 2010 to have their progress independently “validated”. These validation reports would serve as input into a board decision as to whether or not they are fully “compliant” with the rules of the initiative. Of those 22 countries, only two met the deadline—Azerbaijan and Liberia—while the majority of countries were granted an extension with two countries dropped from EITI

(Equatorial Guinea and Sao Tome and Principe.) In some countries, it is clear that EITI has disclosed new information and provided a platform for civil society and government engagement. In Ghana, for example, the EITI process in the mining sector has raised awareness about weaknesses in gold mining royalty collection and heightened the debate on the use of oil revenues that will flow from 2011 onwards.⁴ But in Ghana, there is a vibrant civil society, active press and a generally favorable human rights environment. In Liberia, EITI reporting has raised awareness in communities and led to questions about company payments and how the government is using revenues. Liberia has also enshrined EITI practice in the Liberia EITI Act, a law that requires all government agencies and companies to comply with EITI and to disclose operating contracts.⁵

In other countries, the impact of EITI on human rights, the development of independent civil society and improvements in the use of government revenues is questionable. In some cases, EITI may help open up the previously taboo subject of government revenues from extractive industries, but there is clearly a limit as to how much openness will be tolerated and whether the government will allow information disclosed through EITI to be used by watchdog groups, journalists and others for accountability purposes.

In Azerbaijan, there is some evidence that civil society capacity has improved during EITI implementation but progress in EITI implementation has been set against a weak human rights record for the country.⁶ The country received EITI “compliant status” in February 2009 even though no multi-stakeholder working group had been established—a requirement under EITI—and in spite of questions regarding the accuracy and comprehensiveness of EITI payment information. Throughout 2009, the status of Azerbaijan came into question as the country did not fulfill the conditions that the Board had set for Azerbaijan in order to retain its Compliant status. Because Azerbaijan missed its 15 August 2009 deadline for fulfilling these conditions, the board was forced to review Azerbaijan’s status at two subsequent board meetings. Azerbaijan finally fulfilled these conditions in February 2010—one year after it was initially deemed compliant—and it was at this stage that Azerbaijan’s compliant status was reconfirmed.

While Azerbaijan had, somewhat prematurely, been deemed Compliant by the EITI board, the State Department and other human rights observers noted a worsening of some human rights in the country during 2009. The State Department noted in its 2009 human rights report on Azerbaijan that government restrictions on freedom of association actually worsened during 2009 and that the government does not respect freedom of expression or the press in practice.⁷

⁴ Oxfam America, *Ghana’s Big Test: Oil’s Challenge to Democratic Accountability*, 2009. <http://www.oxfamamerica.org/files/ghanas-big-test.pdf>

⁵ Liberia EITI, “Addressing the roots of Liberia’s conflict through EITI”, 2009. <http://eiti.org/files/EITI%20Case%20Study%20-%20Liberia.pdf>

⁶ Michael Brakke, et al, authors. *Fighting Corruption, Strengthening Governance: The Role of Civil Society in the Extractive Industries Transparency Initiative*, Woodrow Wilson School of International and Public Affairs, February 2009. <http://pwypusa.org/clientimages/39924/princetoneitfinalreport.pdf>

⁷ State Department 2009 Human Rights Report: Azerbaijan. <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136020.htm>

In Equatorial Guinea, a country marked by massive oil-fuelled corruption⁸ and ruled by an authoritarian regime, the country was allowed to join EITI as a “candidate” in 2008 even though the human rights situation in the country meant that it was doubtful that the government would permit real and independent civil society engagement in the process.⁹ Free elections have never been held. Independent opposition parties face harassment, arrest and criminal prosecution. There is no independent broadcast media in the country and all but a handful of print media are state-controlled. Even the few independent media outlets that exist are not at liberty to report on corruption or otherwise criticize the country’s leaders. In this environment of repression, there are hardly any independent civil society groups to speak of, and even fewer who dare work on sensitive issues such as human rights or corruption.¹⁰ Civil society organizations (CSOs) are under severe restrictions—they must get approval to operate from the Ministry of the Interior, must regularly report to the Ministry and must inform the government of any outside funding. Foreign NGOs hoping to work with local groups to build their capacity have faced numerous obstacles. Equatorial Guinea was dropped from EITI on April 15 after it was not granted an extension in order to complete its validation process.

In other countries, the gulf between EITI and human rights practice has also been wide and the EITI board has not taken forceful action. Activists have been harassed, arrested, prevented from travelling abroad and had their NGOs deregistered. The government of Congo-Brazzaville arrested and charged two anti-corruption activists, including EITI board member Christian Mounzeo, in 2006, all while maintaining its “candidate” status. In Gabon in 2008, activist Marc Ona was prevented from travelling abroad and many NGOs involved in Publish What You Pay were de-registered by the government all while Gabon served on the EITI board.¹¹

During the next few months, the EITI board will have to carefully scrutinize the final validation reports submitted by participating countries, especially with regard to the free, independent, and active participation of citizen watchdog groups in the country-level EITI process. It is also essential that civil society groups are not “prisoners of process”—in other words, freedom of expression and association must be respected both inside and outside the formal EITI process. The EITI should not place itself in the position

⁸State Department 2009 Human Rights Report: Equatorial Guinea—“According to Human Rights Watch, Teodorin Obiang, the president’s son, spent more on luxury goods during 2004–2007 than the government’s 2005 budget for education; purchases included a \$35 million mansion, a \$37 million jet, and luxury cars worth at least \$2.6 million. President Obiang claimed information on oil revenues was a “state secret” and resisted calls for transparency and accountability.” <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135951.htm>

⁹State Department 2009 Human Rights Report: Equatorial Guinea—“The law restricts NGO activity, and the few existing domestic human rights NGOs focused on development issues involving social and economic rights, such as health and elder care. Although the law includes human rights among the areas in which NGOs may operate, no NGO reported publicly on the abuse of civil or political rights by the government or on official corruption Government restrictions, including burdensome registration requirements and lack of capacity to manage and provide the public with information, continued to impede the activities and development of domestic civil society.” <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135951.htm>

¹⁰See Human Rights Watch, *Well Oiled: Oil and Human Rights in Equatorial Guinea*, 2009. <http://www.hrw.org/node/84253>

¹¹Adam Nossiter, “Underneath Palatial Skin, Corruption Rules Gabon”, *New York Times*, September 14, 2009. Veronique Mistiaen, “African rainforest activist wins international Goldman prize”, *The Guardian* (UK), April 20, 2009.

of negotiating commitments from governments not to harass or obstruct civil society groups while these groups participate in the narrow confines of EITI while, at the same time, the broader environment for independent action remains restrictive or even deteriorates. Respect for human rights, including freedom of expression and association, is fundamental to the reform agenda in resource-rich countries. Transparency regarding financial flows in the oil and mining industries can help increase accountability around government spending decisions only in countries where citizens, journalists, and parliamentarians can ask questions of their own governments.

While EITI is making some progress in some countries, the pace and depth of progress to date, and the fact that many resource-rich countries are outside the process, show that other complementary measures are needed. The US Congress, for example, should pass the Energy Security through Transparency Act (S. 1700) this year, to increase the disclosure of oil, gas, and mining company payment information to host governments around the world. This legislation would complement EITI and provide regular information on payments to host governments that would not be dependent on the waxing and waning of political will or the voluntary participation of countries in EITI.¹² This legislation is endorsed by a broad range of anti-poverty, human rights, environment and faith-based groups.

CONCLUSION AND RECOMMENDATIONS

For the US and other international “supporting governments” of EITI and other transparency efforts, it is important to see EITI as one part of broader and more comprehensive strategies that should be developed for resource-rich states that include human rights promotion, political accountability and improvements in transparency in other areas, such as government budgets and contracts, that are not yet part of the EITI mandate. EITI by itself cannot serve as a stand in for such strategies and it would be unwise to think that EITI alone will spur significant progress on human rights, civil society development or anti-corruption efforts. To pretend otherwise would, in some cases, mean that EITI was being used as a fig leaf to cover up a lack of such strategies and a lack of progress on human rights and political accountability.

In closing, I would like to offer a number of recommendations to the USG and for the EITI process.

- The US State Department should develop concrete strategies for human rights promotion and protection in resource-rich states, with targets and benchmarks. Where EITI is being implemented, such strategies should be integrated with donor support for the EITI process.

The US should not limit itself to countries where EITI is being implemented. For example, in Equatorial Guinea the US should develop and implement a “road map” on human rights and anti-corruption that would include support for workspaces for civil society groups (“Democracy Centers”) and funding for civil society work on human rights, transparency and rule of

¹²See www.openthebooks.org for more information on the Energy Security through Transparency Act.

law issues; exchange opportunities for Equatoguinean civil society activists; and visa denials for Equatoguinean officials credibly implicated in corruption.¹³ The road map could also set concrete benchmarks that the government would need to achieve in order to be granted future high-level diplomatic visits, for example removing barriers to civil society development; verifiable declaration of assets by government officials; and publication of national budget information.

- The US State Department's Bureau of Democracy, Human Rights and Labor should actively engage in the global EITI process, for example through participation in EITI's "Rapid Response" board committee focused on protection of civil society groups.

- For the first time, the 2009 State Department Annual Human Rights Reports have a section on "Official Corruption and Government Transparency". This section should report on the ability of civil society groups to freely participate in the EITI process if the country is a participant.

- The US should increase support for efforts by civil society, journalists and others to disseminate and popularize information disclosed as a result of EITI process. Such steps—such as radio programs in local languages—are relatively inexpensive and can be powerful.

- The US Treasury should not approve international financial institution financing for extractive industry projects in countries that do not meet minimum governance threshold criteria regarding transparency, human rights and the rule of law. For example, in 2008 the World Bank's International Finance Corporation had scheduled a board discussion of a \$500 million bauxite project in Guinea shortly before the coup in December 2008. Given the situation in the country, it was extremely unlikely that government revenues from the project would have put to good use.

- The US Congress should pass the Lugar/Cardin Energy Security through Transparency Act (S.1700).

- The EITI board should consider revising participation criteria so that candidate countries must show that there are no restrictive laws, cumbersome procedures or practices which restrict independent civil society operation.

- The EITI Board should complete, in a timely and rigorous manner, the assessment it is now conducting 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 inform the revision of the EITI sign-up criterion for countries that are interested in becoming EITI Candidates. Prior to becoming EITI Candidates, countries should show that there are no restrictive laws, cumbersome procedures or practices which restrict independent civil society operation.

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

¹³See EG Justice, "Transparency and Accountability in Equatorial Guinea: Policy Recommendations for the Obama Administration", July 2009. www.egjustice.org

**PREPARED STATEMENT OF ANTHONY RICHTER, CHAIRMAN
OF THE GOVERNING BOARD, REVENUE WATCH INSTITUTE**

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

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.

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

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.

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

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

ENSURING THAT THE CONDITIONS ARE RIGHT FOR EITI
IMPLEMENTATION

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

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>

should guide the revision of the EITI sign-up criterion for countries that are interested in becoming EITI Candidates.

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 Con- vention on the Elimination of All Forms of Racial Discrimination (CERD)	International Cov- enant on Civil and Political Rights (ICCPR)	Optional Protocol to the Inter- national Covenant on Civil and Polit- ical Rights (CCPR-OP1)	International Cov- enant on Eco- nomic, Social & Cultural Rights (CESCR)	Convention Against Torture & Other Cruel Inhu- man or Degrading Treatment or Pun- ishment (CAT)	Optional Protocol to the Convention Against Torture & Other Cruel Inhu- man or Degrading Treatment or Pun- ishment (CAT-OP)	Convention for the Protection of All Persons from Enforced Dis- appearance (CPPED)	African Charter on Human & Peo- ple's Rights	American Conven- tion 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
Cameroun	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	20-Jul-87	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	22-Sep-04	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	18-Apr-08	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	25-Oct-06	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	11-Jan-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	9-Apr-08	6-Aug-69	18-Nov-74	16-Apr-91	18-Nov-74	24-Jan-02	N/A	N/A	N/A	N/A
Mozambique	11-Aug-08	18-Apr-83	21-Jul-93	N/A	N/A	14-Sep-99	N/A	N/A	22-Feb-89	N/A
Niger	14-Dec-04	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	29-Jun-06	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	16-Nov-04	6-Aug-70	13-Sep-72	13-Sep-72	13-Sep-72	9-Jul-86	N/A	N/A	N/A	N/A
Peru	12-Apr-06	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. *	30-Sep-04	2-Aug-67	23-Aug-96	23-Aug-96	N/A	N/A	N/A	N/A	N/A	N/A
Sierra Leone						25-Apr-01	N/A	N/A	21-Sep-83	N/A

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.

PREPARED STATEMENT OF MAX BOKAYEV, CHAIRMAN, ARLAN

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 “Kazakhgate”.

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.



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