

Testimony of

Jeffrey Krilla

September 24, 2008

Statement of Jeff Krilla

Deputy Assistant Secretary of State for Democracy, Human Rights and Labor before the

Senate Judiciary Subcommittee on Human Rights and the Law

Wednesday, September 24, 2008

Mr. Chairman and Members of the Committee, I am pleased to have the opportunity to testify on human rights issues in the extractives industry. Your interest in this important subject is certainly appreciated.

The promotion of human rights and fundamental freedoms - as embodied in the Universal Declaration of Human Rights - is a cornerstone of U.S. foreign policy. We work very hard to promote and safeguard human rights for individuals the world over and believe that respect for human rights helps secure the peace, deter aggression, promote the rule of law, combat crime and corruption, strengthen democracies, and prevent humanitarian crises. Successfully combating human rights abuses requires a coordinated response from key stakeholders - which begins with governments, but also includes corporations and non-governmental organizations.

We take a multi-stakeholder approach, recognizing that the expanding reach and influence of multinational corporations has led to increased demand for voluntary corporate social responsibility (CSR) in general and more specifically as it relates to promoting respect for human rights. DRL actively engages corporations, both multinational and domestic, on these priorities - encouraging them in turn to adopt policies and practices that promote respect for key corporate social responsibility tenets.

Although abundant natural resources in developing countries can offer the promise of economic development and prosperity, they also provide the opportunity for corruption, exploitation, and conflict. These negative effects are certainly not unique to the oil, gas and mining sectors. But, given the focus of this hearing, I will focus my remarks today on human rights concerns relating to the extractives industry. We document these concerns in our Annual Country Reports on human rights practices.

Since 2006, militant groups in Nigeria's Niger Delta increasingly employed violence, including kidnapping of oil company workers and relatives of prominent politicians, to demand greater control of the region's resources. Fighting connected to the theft of crude oil, known as oil bunkering, also continues. Over 200 persons (Nigerian nationals and expatriates) were kidnapped in approximately 60 incidents during 2007. Oil facility guards and soldiers were among those killed in these incidents. Government authorities responded to a number of these incidents by deploying the Joint Task Force, or JTF, soldiers to the region. The JTF, a unit composed of the various military branches that was established by the government in 2003 to restore stability in the Niger Delta region, reportedly used excessive force and engaged militants and criminals in gun battles, which occasionally resulted in civilian casualties and worsened security.

In Angola, abuses by private security forces have increased in the diamond rich provinces of Lunda Norte and Lunda Sul in 2006. In the past national police and immigration officers had been responsible for most of the human rights abuses perpetrated against Congolese and West African migrant miners. Following large-scale deportations and violence associated with Operacao Brilhante, a government operation to stem illegal migration, these abuses by the national police and immigration officers declined after the operation ended in February 2005. The detention and expulsion of illegal miners continued, but private security contractors hired by diamond companies to protect their concessions from illegal exploitation were responsible for most of the violence. Operation Kissonde: The Diamonds of Humiliation and Misery, a report by local human rights activist Rafael Marques, documented 66 cases of abuse of civilians, most of whom were illegal miners, by private security companies in the Cuango municipality of Lunda Norte during 2006. Another human rights activist reported that private security companies hired to protect diamond concessions in the same area killed 10 persons between January and June 2006. In 2007, reports of killings by private security companies in Lunda Norte and Lunda Sul areas continued, but declined significantly and we are hopeful that the trend will continue, according to Partnership Canada Africa's Diamond Industry Annual Review.

In the Democratic Republic of Congo's mining sector, middlemen and dealers acquired raw ore from unlicensed miners in exchange for tools, food, and other products. Miners who failed to provide sufficient ore became debt slaves, forced to continue working to payoff arrears. The government has not attempted to regulate this practice.

While there are laws in the Democratic Republic of the Congo to protect children from exploitation in the workplace, government agencies have not effectively enforced child labor laws. Child labor remained a problem throughout the country, and there continued to be reports of forced child labor, particularly in mining. Security forces and armed groups used children, including child soldiers, for forced labor in mines. For example, from November 13-17, 2007, a United Nations Human Rights Office field team in Misisi, South Kivu Province, observed several children working in illegal gold mines for soldiers of the Armed Forces of the Democratic Republic of Congo (FARDC) of the 115th Battalion. Children make up as much as 10 percent of the work force in the informal ("artesianal") mining sector.

In mining regions of the provinces of Katanga, Kasai Occidental, Oriental, and North and South Kivu, children performed dangerous mine work, often underground.

From the taking of lives to the exploitation of children, these incidents not only pose serious concerns but, in many instances, violate the host country's own laws. In some cases, a host government allows these abuses to take place by not enforcing their own laws or not conducting investigations of abuses and not prosecuting appropriately. In the worst cases, a host government commits the abuses when its own security forces perpetrate the acts. Additionally, host government's failure to address root-causes of discontent and misery can contribute to a climate of lawlessness. For example, many of the kidnappings I referenced in the Niger Delta were perpetrated by militant groups trying to force the government to develop local economies and increase local control of oil revenues-a result of the federal and state governments' inability to turn the region's significant oil revenues into meaningful economic development for the people of the Niger Delta. Extractive industries may also feed an ongoing conflict, such as in the eastern Democratic Republic of the Congo, where numerous illegal armed groups control mines, use local labor (sometimes forcibly) and then export the mined ore through neighboring countries, using the profits from such sales to buy additional arms and otherwise support their movements.

Human rights obligations rest with governments, and for human rights abuses in the extractives industry to be stopped, ultimately good governance is requisite - rule of law, transparency, and accountability. That is why we press governments to adhere to internationally-accepted human rights standards and norms.

The international community has a role to play, as well. Other governments and the multinational companies with extractive operations in these host countries must work together to promote good governance and the respect of human rights.

One of the ways in which the Department of State has worked with U.S oil, gas and mining companies on these issues is through voluntary corporate social responsibility initiatives such as the Extractive Industries Transparency Initiative and the Voluntary Principles on Security and Human Rights. We've also worked closely with the diamond industry and civil society through the Kimberley Process to prevent rough diamonds from financing conflict. I believe most of you are familiar with these efforts; so, I will just touch on them briefly.

The Extractive Industries Transparency Initiative, or EITI, is a multi-stake holder effort to increase transparency in transactions between governments and companies within extractive industries. The initiative supports improved governance in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas and mining. Participants include supporting governments, implementing governments, extractive industry companies, civil

society organizations, and international financial institutions. The underlying principle of EITI is that transparency over payments and revenues increases accountability and therefore the likelihood that the revenues generated by the development of natural resources are used in an efficient and equitable manner.

The USG has been an EITI-supporting country since the initiative's inception. The USG provides support and assistance to implementing countries and participates in EITI's internal governance, self-regulation, and policy development. The USG also engages in outreach to encourage EITI participation by other governments, industry, and civil society.

The Department of State has the interagency lead in the support and guidance of the EITI. We also benefit from strong interagency cooperation with the Treasury Department and Department of Commerce. USAID Missions take the lead in managing funds that support civil society and governments by strengthening and improving capacity, good governance, and revenue transparency. A Department of State representative currently sits on the EITI Board of Directors and, starting this year, on the EITI Multi-Donor Trust Fund (MDTF) Management Committee. State representatives actively participate in Board meetings, calls, and discussions and encourage other countries to join the initiative.

Additionally, we have provided foreign assistance aimed at meeting EITI's objectives. In response to a Congressional directive, USAID is administering almost \$3.0 million in FY2008 to the EITI Multi-Donor Trust Fund. In FY20062007, USAID administered almost \$2.0 million in Economic Support Funds (ESF) to support EITI implementation, primarily in Nigeria, Peru, and the Democratic Republic of Congo, and to strengthen the role and capacity of civil society organizations in the EITI process.

Support for the EITI is just one part of a much larger effort to combat corruption and promote good governance. Our USAID Missions around the world work to make the most effective use of development assistance funds to support efforts to increase transparency and accountability and promote good governance. Additionally, USAID's Global Development Alliance has been active in working with governments, industry and civil society in the development of equitable, transparent and environmentally sound extractive industries.

Similarly, the U.S. has supported the highly successful efforts of the Kimberley Process Certification Scheme to monitor and control the world's trade in rough diamonds. Last year, the 73 countries which participate in the Kimberley Process monitored \$38 billion in diamond trade in an effort to prevent the horrific human rights abuses witnessed in the 1990s in countries such as Sierra Leone, Angola and the Democratic Republic of Congo.

The Kimberley Process has an active monitoring process whereby participant countries agree to open their doors and books to peer review visits. More than 60 review visits have been conducted. This kind of transparency is remarkable in an industry in which few receipts were ever kept just a few years ago. By monitoring rough diamond trade and production statistics, we hope the Kimberley Process will detect anomalies in the trade and help us prevent future conflict.

The Voluntary Principles on Security and Human Rights (VPs) were established in 2000 to provide practical guidance that will strengthen human rights safeguards in company security arrangements in the extractive sector. The short-term goal of the VPs is to encourage extractive companies to better understand the environment where they operate, improve relations with local communities through dialogue, and uphold the rule of law. The long-term goal is to create a better environment for sustainable economic investment and human rights.

The VPs were negotiated and adopted in response to the concerns of governments, extractive companies and civil society where difficult operating environments create challenges to both security and human rights.

Today, the VPs participants include four governments (the U.S., the United Kingdom, the Netherlands, and Norway); eighteen oil, gas, and mining companies; and seven international NGOs. The current four government participants are the home governments of the major oil, gas and mining company VPs participants.

The U.S. government led the establishment of the VPs, along with our colleagues in the United Kingdom, and we have continued to play a leadership role in the initiative. We encourage U.S. companies and other governments to support and participate in the initiative. We have also played an integral part in developing a framework to encourage implementation of the principles and accountability. Through USAID, the U.S. government supports the Extractive Industries Network (EIN) in the Democratic Republic of Congo. EIN includes companies that are committed to implementing the VPs and who engage regularly with other stakeholders on this issue. Together, they are working to create protocols relating to the comportment of public security forces in mines and to find constructive ways to support government efforts to improve these services. Additionally, EIN projects have provided VPs training materials for private and public security actors.

In these initiatives, participation of the international community is crucial but not sufficient-- participation of host governments is equally critical. For example, within the context of the VPs, many of the guiding principles to which companies commit with regards to their interactions with public security can only be truly effective with the support of the host government. Under the VPs, for example, companies volunteer to express their desire to host governments that security be provided in a manner consistent with their human rights policies and that security personnel should have adequate and

effective training. Companies also volunteer to request that host government public security personnel credibly implicated in human rights abuses not provide security services for the company.

For these actions on the part of companies to be truly effective, host countries must embrace the VPs. Let me be clear: Participation in the VPs does not confer a "Good Housekeeping" seal of approval on a host country. The VPs were not created to be an exclusive or elite club, nor were they intended as a certification standard for human rights in the extractives industry. Membership in the VPs does not signify an endorsement of any participant's human rights practices - companies, governments, or NGOs.

The VPs are a process of mutual learning and improvement, yet are built on firm commitments embodied both in the Principles and in the unanimously approved Participation Criteria. These Participation Criteria include a comprehensive complaints and suspension procedure that applies to all VPs participants - again companies, governments, and NGOs.

We are working closely with our fellow VPs members and hope to be able to welcome host governments to the table in the near term. I just returned from a trip to Nigeria and the Democratic Republic of Congo where I pressed the importance of adhering to internationally accepted human rights standards and norms. I raised the VPs in both countries, and highlighted their value in serving as an additional tool available to those governments in addressing the grave issues I highlighted earlier concerning human rights in the extractives industry. The feedback on my VPs message from governments, companies, and civil society in both countries was positive, and we will work with fellow VPs members on efforts to further engage those two governments.

We can spotlight problems and draw international attention to human rights concerns, but without the commitment of host governments, no effort to address human rights concerns in the extractive sector or any other, can be successful. As voluntary initiatives become more globally accepted, expectations for companies to adhere to the good corporate practices they promote grow. These voluntary initiatives are particularly helpful in providing guidance to multinationals that do not have a history of deliberate attention to social responsibility. For example, in several of my bilateral dialogues with other governments, they have expressed a need for their national companies that work abroad to have the guidance provided in these initiatives. That said, voluntary initiatives, like the VPs, are important complements to, but never can be substitutes for, the obligations of governments to meet their commitments under international law and to establish and enforce the rule of law domestically.

There are some who believe that in the face of poor human rights enforcement records of some governments around the world, the obligation to enforce human rights should be somehow transferred onto corporations. We strongly disagree. Yes, companies must bear responsibility for their policies and practices. But, it is governments that ultimately must be held accountable.

Transferring the enforcement obligation onto companies would only lead governments to expect that they can opt out of their responsibilities because companies will do the job for them. The best option and the key to ending exploitative practices by private sector companies or any other actor, is for governments to engage in good governance and thereby protect human rights enforcement and rule of law.

We are committed to advancing our work in CSR. We appreciate the opportunity this hearing presents for us to share our views on this important issue. Thank you again for the opportunity to speak today. We look forward to continuing this dialogue and cooperation with Congress.