

TO HAVE AND HAVE NOT

Photos:

Page 9 – Aerial photograph of a sawmill;

the Khmer Rouge in Cambodia finances its activities through the illegal timber trade.

Page 11 – A simple mining site in Katanga Province in the Democratic Republic of Congo.

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To Have And Have Not. Resource Governance in the 21st Century

A memorandum of the Heinrich Böll Foundation. By Patrick Alley, Celio Bermann, Luke Danielson, Heidi Feldt, Sudha Mahalingam, Alejandro Nadal, Chandran Nair, Samuel Nguiffo and Silas Siakor
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HEINRICH BÖLL FOUNDATION

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**By Patrick Alley, Celio Bermann, Luke Danielson,
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«Africa's greatest problem is also its greatest hope. Will its resources continue to be exploited, used to fund conflict and corruption, or can we all work to channel those same resources into sustainable development for its future? »

Edward Zwick, Director of «Blood Diamond»

«The major global risks of our time are climate change, global poverty, resource conflicts and the proliferation of weapons of mass destruction. Socially responsible and ecologically sustainable resource management is absolutely crucial in order to deal with some of these interrelated global risks. The G8 should carefully consider the profound insights and suggestions of this Memorandum on the subject of global resource governance.»

Jürgen Trittin, Former Federal Minister for Environment,
Member of the Bundestag for Bündnis 90/Die Grünen

«Congratulation to the Heinrich Böll Foundation. Its memorandum on resource policy brings the central contradiction into focus: exploding demand and lack of justice. The upshot must be direct action aimed at eliminating this contradiction to preserve the peace and promote human rights. The memorandum puts forward concrete demands that go beyond the G8 summit to the wider international community. I hope this document receives the widespread attention it deserves and is successfully acted upon.»

Ute Koczy, Member of the Bundestag, Development Policy Speaker of Alliance 90/The Greens

«In the so-called «triangle of governance», civil society, beside the state and the business community, has an important role to play in issues of sustainable resource governance. However, civil society organizations must be competent to fulfil their function as political and corporate «watchdog», for example, within the framework of their participation in the Extractive Industries Transparency Initiative (EITI). The memorandum of the Heinrich Böll Foundation takes up two important current challenges: on the one hand, it promotes dialogue between civil society groups from different countries, thereby encouraging experience exchange; on the other, it places special emphasis on the dialogue with actors from countries such as China and India, without whom sustainable resource utilization on a global basis is no longer conceivable. It is to be hoped that the governments of the G8 states listen to the voice of civil society, as it finds united and clear expression here.»

Peter Eigen, Chairman of Extractive Industries Transparency Initiative (EITI) and founder of Transparency International

PREFACE

We believe that transparent, sustainable, fair, and just governance of natural resources is a key for peace and sustainable development worldwide. Natural Resource Governance is high on the G8 agenda. But in our view, real reform ideas are missing.

On the occasion of the German G8 presidency in 2007, the Heinrich Böll Foundation has organised a dialogue between civil-society organisations from traditional resource demanders like the European Union and the United States, from resource-rich countries in sub-Saharan Africa, and actors from the emerging economies (China, Brazil, Russia, India, and Mexico). The dialogue commenced in March 2007 in Berlin with an expert roundtable on Resource Governance in Africa in the 21st century and this Memorandum as the major output.

With the Memorandum «To Have And Have Not», the Heinrich Böll Foundation is pursuing two aims:

■ We want to offer a major civil-society input in the G8 process and hope to convince the German government and its G8 counterparts to follow our political recommendations.

■ We wish to provide a foundation for the establishment of an international civil-society alliance and to strengthen civil-society positions on questions of natural resource governance.

The approach of this Memorandum – incorporating cross-sectional and cross-regional perspectives – and the process that led to it are unique. It is part of our self-conception as a Green political foundation to promote a South-South dialogue and to strengthen networks to that purpose. The Memorandum is an attempt to turn such dialogues into a policy manifesto that – taking into account the different perspectives and approaches – tries to agree upon common principles and action tools for fair, just, and ecological resource politics; a difficult, ambitious, and challenging but very rewarding process!

We hope it will serve as a platform for civil society worldwide that will hopefully result in the engagement of more dialogue amongst civil-society groups, but also with other actors from the academic, political, and corporate sector. The Memorandum will also serve as a base for our own work in the head office and in our 26 regional offices around the world that will outreach to our partners and continue working on issues linking ecology, justice, and democracy.

Berlin, May 2007

Barbara Unmüßig, Member of the Executive Board

Lili Fuhr, Head of International Politics Department

EXECUTIVE SUMMARY

Despite their wealth in natural resources, many countries in Africa, Asia, and Latin America suffer from ever-increasing poverty as the exploitation of their resources is often accompanied by serious environmental and social impacts or even violent conflicts in the producing regions, while the current growth paradigm of consumer classes around the world is increasing the pressure on the natural resource base.

How natural resources are accessed, how contracts are negotiated, and how economic benefits are managed and used are crucial factors in the struggle to alleviate poverty. These elements of resource governance are also critical in bringing about and maintaining national and regional stability, in fostering truly democratic governments, and in avoiding conflict. The G8 summit in Germany is an appropriate occasion to appeal for a policy change regarding the governance of natural resources.

The challenges for the natural resource sector in the 21st century are numerous and closely interrelated. They include: macroeconomic conditions (terms of trade, investment regimes), climate change, high consumption rates, peak oil, energy security, social and environmental impacts, corruption, human rights abuses, and conflict resources.

■ *Macroeconomic conditions for development.* Rules have to be installed and existing rules have to be enforced for investors in the resource sector with the aim of fairly sharing costs and benefits between investors and resource-rich countries. The existing International Investment Agreements (IIAs) emphasise investors' rights rather than the development interests of the host countries. They should be reframed with development linkages. At the same time, the deteriorated terms of trade, which fuel indebtedness of resource-rich countries, need to be improved.

■ *Governance of natural resources.* Corruption and mismanagement of revenues contributes to the discontent of populations and to political instability. The key stepping stone for improving governance is transparency at all levels, including revenue flows, contracts, and the allocation of concessions. Natural resources have often played an important role in providing money to maintain and to prolong armed conflicts. The international community is providing armed groups and corrupt regimes with unfettered access to world markets. With the UN Security Council as a key player, the international community must address the economic base for conflicts and wars and establish corresponding rules and regulations to control the flow of finances. A first step is to agree upon a common definition of what a «conflict resource» is. Private and public banks play a key role within the network of trusts and companies acquiring and generating money from corruption and crime, which is used for personal profit or the maintenance of conflicts. Although in the last few years a network of laws and regulations was established, the money still finds its way into the international financial system. Existing rules and regulations have to be strengthened. Transparency initiatives need to cover the financial sector as well.

■ *Forests – time for a change.* Forests request special consideration as 1 billion people living in extreme poverty depend on forests for their livelihood and more than 350 million people living in and around forests are heavily dependent on them. The enormous ecological importance in terms of biodiversity and climate change underline the need for the implementation of special rules and regulations. The industrial-scale export-based logging paradigm has nowhere contributed to sustainable development in tropical forest-rich countries. Alternative models of forest use are given little chance. The industrial log-

ging model is even enhanced by the undifferentiated import customs of timber-demanding countries, of which only the G8 nations import around 40 per cent of illegally traded timber. The forests of the Democratic Republic of Congo (DRC) could be a focal point for a paradigm change, and the window of opportunity to act is now, since large concessions have not yet been given out to timber companies.



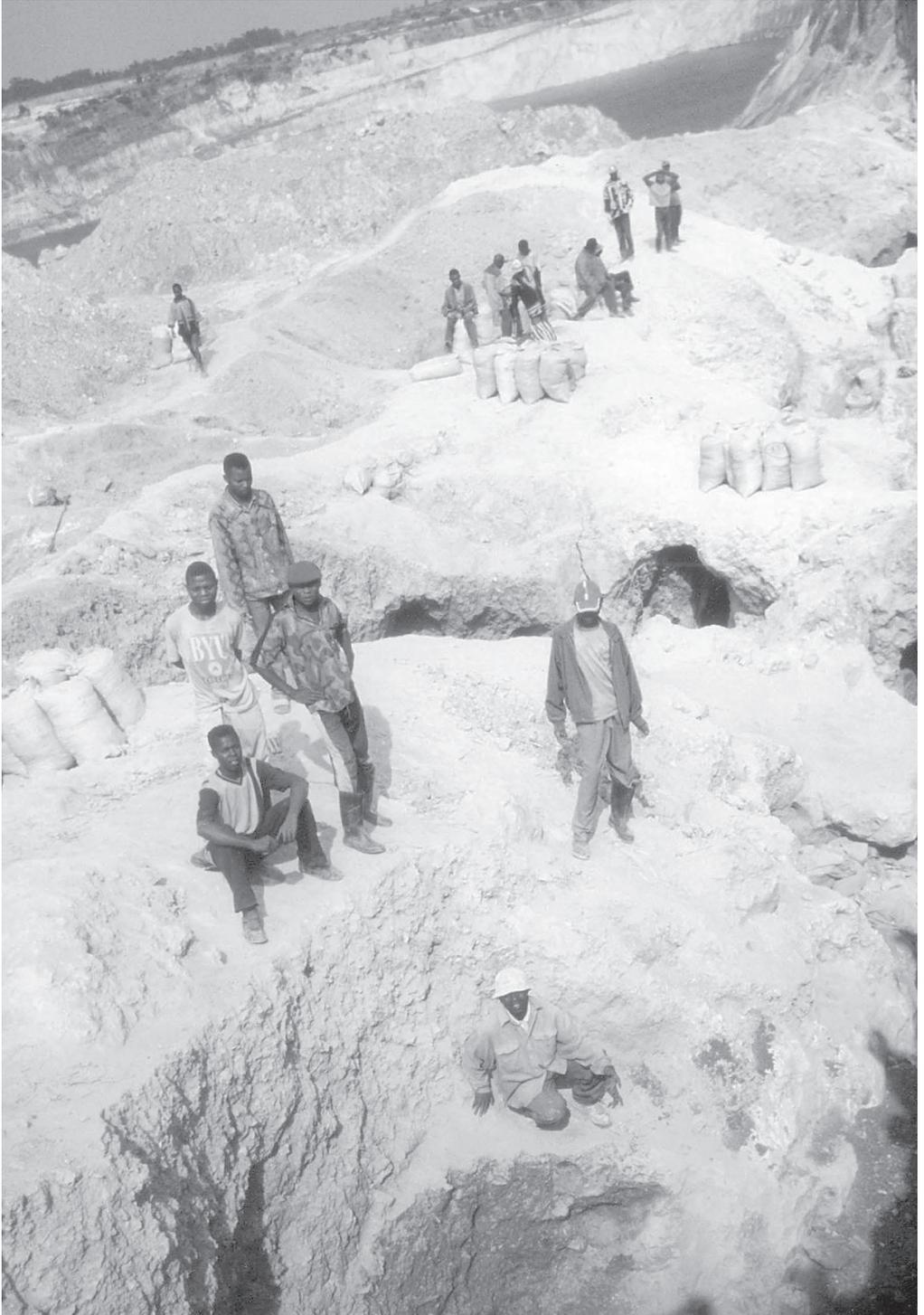
POLITICAL DEMANDS AND RECOMMENDATIONS TO THE G8

Improving the governance of natural resources is one of the key challenges the international community faces in the 21st century. The G8 countries are key players in this sector and can therefore also promote reform and trigger crucial change. But they are not the only actors involved. Any process leading to the creation and administration of standards or initiatives has to be inclusive and brought about through a real dialogue at eye level, incorporating all stakeholder's right from the start. In order to face these challenges and contribute to sustainable development and peace, there is much the G8 can do:

1. The G8 should call upon the UN Security Council to endorse a definition of conflict resources which is linked to a coherent and proportional response to the trade in conflict resources, including targeted sanctions and asset freezes when appropriate.
2. The G8 should abandon the paradigm of commercial logging as the primary mechanism of tropical forest management, especially in governance-poor environments, taking particular account of the links between deforestation and climate change while using the forests of the DRC as a focal point. G8 governments should ensure that their own procurement policies require that they only purchase sustainably managed timber and timber products from legal sources.
3. The G8 should address the issue of transparency beyond the current scope of the Extractive Industry Transparency Initiative (EITI) and incorporate transparency in contracts and concession allocation. These aspects should be part of the G8 outreach dialogue with the emerging economies on EITI. The G8 should press for the UN to endorse the EITI.
4. Given their role as the primary source of direct and indirect funding for the World Bank Group (WBG), the G8 should ensure that WBG support for oil, gas, and mining projects adhere to rigorous environmental and social standards. The G8 should require that the WBG revisit the recommendations of its own Extractive Industries Review of 2003 and sequence its investments to ensure that adequate governance conditions exist in its client countries prior to financing extractive industry projects.
5. The G8 leaders should clearly assert the importance of the existing international regulatory framework as the basis for national legislation¹, make sure that existing rules are enforced in G8 countries, and ensure that companies violating those rules are prosecuted. The G8 should press for a UN agreement on international norms and principles to level the playing field for extractive companies and improve accountability with respect to human rights, the environment, and social standards.
6. With many of the most influential private and public financial institutions listed in G8 countries, the G8 should push for binding rules that prevent the transfer of funds generated by operations involving money laundering, organised crime, conflict resources, corrupt practices, and socially and environmentally harmful projects.
7. The G8 should make sure that all future «partnerships» for investment and trade are designed with development linkages and critically examine all existing International

¹ National and international humanitarian and criminal law, the ILO core labour standards, the ILO convention on indigenous peoples, and the UN covenants on Human Rights as well as the OECD guidelines and international agreements on environmental standards..

Investment Agreements signed by resource-rich developing countries for development benefits. In addition to that, the G8 should support initiatives that aim at increasing the negotiating capacity of host countries.



I A MEMORANDUM FOR THE G8

Many of the world's poorest countries – especially in Africa, Asia, and Latin America – are rich in natural resources² which, if well-managed, could create enormous wealth, bring much-needed stability and, crucially, pull them out of poverty. Over 50 developing countries depend heavily on the export of oil, gas, and mineral resources as well as of renewable resources like timber. However, despite their natural wealth, up to 1.5 billion people in these countries are estimated to live on less than US\$2 per day. Twelve countries, mostly dependent on mineral revenues and six dependent on oil revenues, are classified as highly indebted poor countries; 26 of the world's 36 oil-rich countries rank among the bottom half of the world's most corrupt countries.³

In many cases the exploitation of the natural wealth of resource-rich countries has not been able to contribute to sustainable development on a broad basis. On the contrary, bad governance of natural resources has had serious environmental and social impacts in the producing regions and has often contributed to or prolonged violent conflict. It has demonstrably increased tensions between regions in many countries. There are very few examples where, under very specific conditions, the so-called «resource curse» has been avoided. Botswana is often cited, as is Norway – among the industrialised countries.

How natural resources are accessed, how contracts are negotiated, and how economic benefits are managed and used are crucial factors in the struggle to alleviate poverty. These elements of resource governance are also critical in bringing about and maintaining national and regional stability, in fostering truly democratic governments, and in avoiding conflict.

The current growth paradigm of the industrialised world and the growing demand for natural resources by consumer classes around the world are increasing the pressure on the natural resource base. All too often human rights, peace, and sustainable development are sacrificed by the politics and economic interests of resource-importing countries. Poor management of natural resource development is not a «producer problem» or a «consumer problem» – it is everyone's problem.

The growing engagement of actors from the emerging economies in the natural resource sector in Africa and elsewhere puts the ball firmly in the hands of the governments of the producing countries to create a level playing field and fair rules for all. But it also offers a unique chance and opportunity for the consuming countries to realise their common interest in a stable investment climate, security of supply, and transparent access to the natural resource base. All of that will not be possible without linking supply with good governance of the natural resources in question. To be sustainable, the link has to be made on a variety of scales: global, regional, national, and local.

² «Resource rich» is defined here in line with the IMF Guide on Resource Revenue Transparency as countries in which hydrocarbon and/or mineral resource revenues contribute to 25 per cent or more of total fiscal revenue, or where such resources account for 25 per cent or more of total export proceeds. IMF Guide, pp. 63–4.

³ «Oil-rich» is defined here using the IMF Guide on Resource Revenue Transparency, see note 4. Transparency International, Corruption Perceptions Index 2006, available at: <http://www.transparency.org>; International Monetary Fund, Guide on Resource Revenue Transparency, June 2005 (IMF Guide), pp.63–4, available at: <http://www.imf.org>.

The international community has recognised the need for a common effort to eliminate poverty and has stated concrete steps in the Millennium Development Goals. So far, little has been achieved. The strategic importance of natural resources for the world economy and the role they play for a country's development make this sector a crucial one to meet these goals.

This Memorandum is not only addressed to the governments of the G8, but also to those of the other wealthy powers; to the governments of the economically poor but resource-rich countries in Africa and elsewhere in the developing world; to those of the emerging economies; to the extractive industries, and to civil-society organisations. We appeal to all actors to commit themselves to working together to ensure that investment and trade in natural resources is equitable, sustainable, and transparent, and truly benefits the populations of the producer countries. We also commit ourselves and our work to the ideas and values expressed in this Memorandum.

In many parts of the world, civil-society actors are facing political defamation and threats to their lives as they work on transparency and good governance of natural resource revenues. We strongly believe that civil society plays a major role in promoting democracy and sustainable development and needs breathing space and freedom to fulfil that role.

The Memorandum starts by drawing the broader picture of resource governance and outlining the key challenges the resource sector faces in the 21st century. Macroeconomic conditions, as discussed in chapter 3, are a key factor for improving the governance of natural resources. They form the basis for the following discussion of existing mechanisms and solutions in key areas of resource governance, such as transparency, social and environmental standards, conflict resources, and the finance sector. The challenges in the forest sector demand a different set of policy solutions, which is why it is discussed in a separate chapter. Each section concludes by naming the challenges for the G8 and giving concrete political recommendations. The key recommendations to the G8 are listed at the beginning of the Memorandum. The detailed annex – a compendium of existing initiatives, mechanisms, and standards – is meant to be a handbook and guideline for further information.

II CHALLENGES OF THE NATURAL RESOURCE SECTOR IN THE 21ST CENTURY

At the beginning of the 21st century, the natural resource sector is facing several inter-related challenges. The way these challenges are managed will decide whether the sector will be a source of destabilisation, destruction, and corruption, or contribute to sustainable development of human societies, communities, and the environment.

Resource extraction is intimately linked to climate change, which is seen by many as the biggest environmental threat humanity is facing in this century. Oil and gas extraction and coal mining provide the fossil carbon that, once it is burned, ends up in the atmosphere, thereby causing global warming. Other mining operations are highly energy-intensive, with very significant emissions of greenhouse gases. Finally, timber extraction releases carbon into the atmosphere that was previously stored in forests and soils. For example, CO₂ emissions from deforestation and burning in the Amazon are the main Brazilian contributions to climate change, and there is growing evidence that climate change is drying out the forests. In Brazil, about 70 per cent of the emissions come from deforestation. The Amazon rainforest is under threat from drought, fires, illegal and destructive logging, and land clearance.

Given the urgency to combat climate change, the continued expansion of the resource sector in the current model of development is simply not an option. Some of the fossil carbon will have to be left in the ground, and forests will need to be protected and restored. All resources will need to be used much more efficiently.

The high consumption rates of consumer classes in Europe, North America, Japan, and Australia leave the biggest ecological footprint on this planet and contribute most to climate change. The current economic growth model is unsustainable and will become even more so as new consumer classes around the world in countries such as China, India, Brazil, or Mexico quickly catch up with the Western model. While for many decades, oversupply and declining prices characterised the resource sector, we are now witnessing rapid price increases and increasing concerns about long-term supply. In the petroleum sector, which is vital for the global economy, the imminence of «peak oil»⁴ has gained increasing attention.

Africa is often viewed as one of the «last frontiers» globally, harbouring a vast natural resource base. The competition for access to Africa's resources offers the continent a great opportunity to create wealth, and the investment it needs for development. But if the competition for Africa's resources results in a «race to the bottom» then it has the potential to endanger peace and stability in the region. The challenges of resource governance must be faced «head on», based on the mutual recognition of the legitimate interests of all parties for reliable access to vital resources.

Resource extraction is a very destructive process when poorly managed. Resource rents contribute to the risk of Dutch disease⁵ and are a permanent source of rampant

4 The question of «peak oil» is not just about the amount of worldwide oil reserves but about the capacity of production. According to the International Energy Agency, the demand for oil in the 1st quarter of 2006 was higher (85.2m BPD) than the supply (84.5m BPD). <http://www.iea.org/textbase/nppdf/free/2006/key2006.pdf>.

5 The deindustrialisation of a nation's economy that occurs when the discovery of a natural resource raises the value of that nation's currency, making manufactured goods less competitive with other nations, increasing imports and decreasing exports. The term originated in Holland after the discovery of North Sea gas. (http://en.wikipedia.org/wiki/Dutch_disease - 15.3.07)

corruption. Accountability tends to be weaker in states where fiscal revenues depend more on resource extraction than taxation. In many cases, the population has reaped few benefits from resource extraction, and true progress in economic development with investment in other economic sectors has rarely been made. In other countries, resource income has led to increased tensions between resource-rich regions and central governments.

Negative environmental and social impacts are frequent, and range from limited, site-specific contamination to large-scale, sometimes indirect ecosystem degradation. They include: oil leakages, accidents on pipelines and platforms, waste management which may affect water and habitat quality, land degradation and water pollution. The poor are proportionally more dependent upon subsistence resources, so environmental degradation tends to have a much greater impact on them. This almost certainly will be the case as the impacts of climate change become more clearly observed. This entails a serious problem of environmental justice.

Uneven creation and distribution of wealth may lead to social upheaval and, in extreme cases, violent conflicts. The diamond-rich region of Kono in Sierra Leone, the oil-rich Niger Delta in Nigeria, and the key timber-producing regions in south-eastern Liberia are classic examples.

Human rights abuses associated with the mining and oil sector often result from the use of security forces (governmental or private) against local protesters. Also, in social terms, the resource sector can be highly disruptive. It frequently attracts migrant workers, thereby destroying local economies and the social structure of the local population. Prostitution, alcoholism, and HIV/AIDS are rapidly expanding under such circumstances, as are sudden imbalances in gender relations.

The WBG-sponsored Extractive Industries Review (2003)⁶ provided a set of valuable recommendations designed to ensure equitable and environmentally sound investments in the extractive sector. The final report of the Review concluded that «The key difference between resource-rich states that do well and those that do poorly is the quality of government institutions and government policies. When governments are not corrupt, act decisively to prevent currency overvaluation, enact countercyclical policies, manage windfall revenues properly, and promote the needs of the poor, the revenues from the development of oil, gas, and mineral resources can contribute to poverty alleviation.»

The key sectors addressed in this paper are the oil, gas, and mining industries. Also included are forests, which demand a largely different set of policy solutions. All of these areas contribute to what has become known as the «Resource Curse». But natural resources are morally neutral: Whether natural resources are a curse or a blessing depends entirely on how they are managed and by whom. Africa, fantastically rich in natural resources yet economically poor, illustrates how there has been a collective global failure to address the resource issue successfully. Recent years have seen great strides forward, with the establishment of processes like the Kimberley Process (KP) and the EITI (ref to annex), but these are still scratching at the surface of the problem of resource governance.

6 Striking a Better Balance, 2004. In 2003, the World Bank Group commissioned a revision of their extractive industries policy and projects, appointing Emil Salim, former Minister in Indonesia, as chair of the process. During the revision process, several stakeholder consultations took place. The final report of the chair was published November 2004.

III IMPROVING MACROECONOMIC CONDITIONS FOR DEVELOPMENT

The resource sector can only become a force for sustainable development if its social and environmental impacts are minimised, and if its benefits and costs are fairly shared. Sensible macroeconomic policies geared to the priorities of social and environmental responsibility provide the necessary backdrop for healthy natural resource governance.

A critical force is the role of investment, and in particular foreign investment, in pursuing development policies. It is imperative that the rules and institutions governing international investment flows are framed to ensure that investment contributes to the sustainable development of resource-rich countries.

Investment regimes are the macroeconomic framework into which all aspects of natural resource governance fall into. Without investment there is no resource production, no export, no profit.

The primary legal and political instruments for the promotion and protection of foreign direct investment are International Investment Agreements (IIAs). The vast majority of IIAs, including most signed by African countries, are based on a treaty paradigm which dates back some 50 years. This model is biased towards investor protection rather than the development objectives of host states. In fact, some forms of international investment agreements may actually undermine the ability of governments to regulate in the public interest in areas such as public health and the environment. Therefore, IIAs need to be framed so as to attract investment that contributes to the development goals of these countries.

Developing countries face both real and perceived disadvantages in negotiating with investors. Often they are dealing with corporations that are far richer and more sophisticated in handling the details of agreements than the country itself, and have access to the best lawyers and other negotiators that money can buy. Conversely, the country may not be able to field a comparable negotiating team, and may well lack experience of the global business sector and the pitfalls of, for example, transfer pricing, off-shore corporate vehicles, and international tax regimes, all of which can serve to put the country at a severe disadvantage. Secondly, many developing countries are genuinely worried about scaring off investors, and are unsure of the strength of their negotiating position; these factors may cause them to agree unfavourable terms. The 2005 iron ore deal between Mittal Steel and the government of Liberia is a case in point.

Another important factor in this context is the fact that the terms of trade for developing countries have deteriorated over the past century. The combination of deteriorating terms of trade and growing indebtedness puts additional pressure on developing countries to increase exports of primary commodities and natural resources. Declining terms of trade have been especially harmful for the least developed countries, and especially for the non-oil-exporting sub-Saharan countries. Forty-three countries continue to rely on exports of less than three non-oil primary commodities for between 20–90 per cent of their foreign exchange earnings. Some of these countries are in or near conflict zones.

In addition to deteriorating terms of trade, volatility in the markets of primary commodities and natural resources has serious repercussions in every economy. For weak exporting countries, volatility in markets of natural resources slows growth, worsens income distribution, and discourages investment. Deteriorating terms of trade, as well as

commodity price volatility, may foment social and political tensions, and in some cases, provide the underpinnings for violent conflict.

Existing Mechanisms

The Model International Agreement on Investment for Sustainable Development devised by the International Institute for Sustainable Development (IISD) («the IISD Model»)⁷ includes rights and obligations for investors, home states, and host states and provides an alternative template to the outdated model used by the majority of current IIAs. The IISD Model starts from the clear relationship between investment and the achievement of sustainable development. It recognises that an IIA is fundamentally about good governance, and that protection of investor rights and obligations and host-state rights and obligations are an essential part of that equation.⁸

Challenges for the G8

Both existing and future IIAs need to strike a balance between investor protection and sustainable development needs, and provide for transparent and accountable institutions and procedures. In particular, any future «partnerships» for investment and trade that the G8 are considering should be designed with development linkages.⁹

Since many of the companies investing in the extractive sector of developing resource-rich countries are listed in G8 or BIC countries, the G8 should support initiatives that aim at increasing the negotiating capacity of host countries, in the long run through building the capacity of state institutions, and in the short run by providing institutional support through a public interest law firm.

7 Although the IISD Model is drafted as a multilateral agreement, its principles can be applied to guide bilateral negotiations as well. It has been used by both individual states as a source to develop their own models, as well as regional groupings of states to devise regional investment agreements. A copy of the IISD Model is available at <http://www.iisd.org>.

8 Source: <http://www.iisd.org/investment>.

9 Germany is proposing that the Group of Eight leading industrial nations this year forge «reform partnerships» with a select group of well-governed African democracies to help them attract international private investment. Source: Hugh Williamson (Berlin) and Alan Beattie (London), «Germany to Focus G8 on Africa investment,» *Financial Times*, 18 October 2006, <http://www.ft.com>.

IV IMPROVING GOVERNANCE OF NATURAL RESOURCES

Weak governance in countries that supply energy and other resources can complicate the security of that supply in three ways. First and most directly, corruption and mismanagement of revenues in a developing country may exacerbate popular discontent and political instability within that country to the point of violent conflict, which itself becomes a threat to the security of supplies. This is the situation in Nigeria, where armed groups that draw on popular grievances against the mismanagement of the oil industry are mounting regular attacks against that industry, which has reduced potential oil production by several hundred thousand barrels a day.

Secondly, corruption in the natural resource sector of a producer country can entrench vested interests in that country whose aim is to abuse their public position to maximise their private profits. This is likely to be highly damaging for the stability of that country and can create an unwelcome volatility in the price and supply of energy. An example is Ukraine, where the available evidence suggests that powerful, private Ukrainian interests, working in tandem with Gazprom, have taken over a central position in the gas transit trade to Europe in a highly opaque manner, displacing the state-owned gas company and raising concerns about the possible involvement of organised crime.¹⁰

Thirdly, there are numerous examples of countries in dire poverty, vulnerable to unrest, and largely dependent on aid, despite their ruling elites reaping huge illicit rewards from the misappropriation of natural-resource revenues. Equatorial Guinea is a prime example. Such countries are inherently more vulnerable to state failure and conflict – the costs of which will have to be borne by their citizens and by the international community (for example through increased aid, the disruption of trade, and the need to mount peace-keeping operations and support refugee populations). Furthermore, the governments of these countries often resort to grave human rights abuses in order to suppress dissent.

4.1 The Need for Transparency

The application of double standards, either by the extractive industries themselves, or as reflected in the implementation of the policies of their home countries, not only undermines reform but threatens peace and stability. For example:

■ One of America's oldest banks – Riggs – was brought down because it held the bank accounts of Augusto Pinochet, and the oil revenues of Equatorial Guinea which were controlled exclusively by President Obiang.¹¹ Despite this, the United States turns a blind eye to the corruption and human rights abuses that typify Obiang's rule. Likewise, the Chinese CNOOC signed a production-sharing contract with Equatorial Guinea in 2006, as did the Brazilian Petrobras.

■ The government of Congo Brazzaville, an EITI candidate country, is ruthlessly intimidating the country's leading civil-society transparency activists – members of the Publish What You Pay (PWYP) coalition – through harassment and an abuse of the legal system,

¹⁰ Global Witness, 2006, *It's a Gas: Funny Business in the Turkmen-Ukraine Gas Trade*, p. 38.

¹¹ Global Witness, *Time For Transparency*, 2004, p. 55; Global Witness, *US Must Act Now on Corruption Allegations Centred on Guinea's Oil Accounts*, press release, 15 July 2004; US Senate Permanent Subcommittee on Investigations, *Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act, Case Study involving the Riggs Bank*, July 2004. The full report is available at http://hsgac.senate.gov/_files/071504miniorityreport_moneylaundering.pdf.

including arrests, trumped-up legal charges, and travel restrictions, preventing these organisations from being represented at international EITI meetings, amongst others. Countries free-riding under the EITI banner threaten the initiative's credibility.

■ Companies are pressing hard to get favourable conditions. For example, in 2005 Mittal Steel managed to negotiate a Mineral Development Agreement (MDA) with the National Transitional Government of Liberia (NTGL), worth \$900 million. Under the terms of the MDA, Mittal took ownership of two major state assets – a railway line and a port – was able to set the price for the iron ore, was granted an extendable five-year tax holiday, negotiated a stabilisation clause which froze Liberia's laws in the concession area for 25 years, and developed a capital structure and tax regime which would have allowed transfer-pricing with substantial potential tax losses to the government. Fortunately, the deal was renegotiated in early 2007, leading to a much more equitable arrangement.

■ The British government regards itself as a world leader in the fight against corruption, as evidenced by establishing the EITI. However, it has seriously undermined its own credibility in this regard, and in turn the international case, by its calling off of a police investigation into an allegedly corrupt arms deal between BAE Systems and Saudi Arabia, which sends a clear signal that Britain will tolerate corruption for political reasons.¹²

■ Securing valuable oil supplies was probably the most important motive for the US-/UK-led invasion of Iraq, and the removal of an inconvenient regime. It remains a pre-eminent example of political manipulation of «evidence» in the United States and United Kingdom in order to invade in the first place, followed by a conflict about natural resources, and pervaded with massive corruption and cronyism..

■ China's Africa policy is based on the principle of «non-interference». This is highly welcomed in Africa after experiencing colonialism and constant interference by the former colonial powers. However, in the long run, the Western countries are failing in their efforts to secure supplies of resources through partnerships with regimes with records of extensive corruption, human rights abuses, and incidents of genocide, exemplified by Angola, Zimbabwe, and Sudan. There is no reason to believe that Chinese investment will not follow the same course, and investment that provides more resources to repressive regimes, regardless of its source, seriously undermines the democratic and human rights of the populations of those countries and threatens poverty alleviation.

Transparency is a key stepping stone in improving governance and fighting corruption. It has to work on several levels:

Corruption in the allocation of resource concessions not only undermines the governance of countries that allocate the concessions but also means a poorer deal for their citizens. In the case of the oil industry – where poor reservoir management can deplete an oil field well before its maximum potential life is reached – this could directly impact on the amount of oil that a country can export.

Contracts often contain confidentiality clauses and are not open to public scrutiny. If the citizens of a country do not know the details of the deal their government signed, they have no way to hold their politicians accountable.

¹² Global Witness, Blair's Government Undermine Global Anti-corruption Fight, press release, 15 December 2006.

Transparency is equally important for the revenue flows of natural resource rents between companies and host governments. If companies publish what they pay and governments publish what they earn, the revenue flows can be traced and governments can be held accountable for a sustainable management of those revenues and a fair distribution of the wealth.

Existing Mechanisms and Solutions

The Extractive Industries Transparency Initiative aims to ensure the transparency of revenues from the extractive industry. EITI is working on a voluntary basis while the international Publish What You Pay campaign supports EITI but demands further mandatory disclosure of taxes, fees, royalties, and other payments by the extractive industry to governments.

EITI is becoming increasingly significant as a partial solution to the problem of corruption in energy-rich developing countries. It will face two major tests in the next year and will need the support of the international community, with a prominent role played by Germany, in order to pass them. Should it fail these tests, EITI may rapidly lose its credibility.

The first test is the validation process, which measures the performance of countries against predetermined criteria. If it is clear that a country is not implementing the EITI in good faith, for example if its government is persecuting or censoring civil-society representatives, then the board members must take a firm stand and ensure that the country is expelled from the EITI. If countries are seen abusing the EITI principles, criteria and validation process without resulting consequences, EITI will quickly lose its credibility, and all the good work done by other countries will be wasted.

The second major test is the need to cement EITI's global status by involving more resource-exporting countries in all regions of the world and, ultimately, the mega-producers of the Middle East. There is also a need to win the backing of China, India, Brazil, and Russia (which has already notionally given its support to the EITI by signing up to G8 communiqués).

Challenges for the G8

On EITI

Germany has taken leadership of the G8 and invited China and India to join EITI. These countries are both major consumers of energy and other natural resources and could support the EITI in the same way that some Western consumer-nations support it, by providing funds and diplomatic support and engaging in dialogues with their own extractive companies to encourage them to play a global role in the initiative. The G8 should press the UN to endorse the EITI. The European Commission could also raise this issue in its dialogues with these countries, as could Germany and other EU member states.

EITI is only meant to be a temporary initiative which needs to be mainstreamed and incorporated into national and international norms and standards. This is a task of home and host countries of extractive-industries companies. To incorporate criteria on transparency in stock exchange listing rules and international accounting standards is an important step towards mainstream transparency.

The G8 should consider placing process-related conditionalities for accountable and transparent natural resource management into future multilateral and bilateral financial assistance packages.

The EITI, for all of its merits, is only designed to cover one aspect of resource-related corruption: the flow of revenues from the extractive industries to governments. It does not cover two other major aspects of the problem: the transparency of access to natural resources and the role of the international financial system in enabling the laundering of stolen resource revenues (see chapter 4.4).

Since all resource-importing countries stand to potentially lose from the political and commercial volatility created by corruption, the G8 should reach out to India, China, and others and suggest a set of shared rules of the game for the awarding of concessions, whereby all companies and countries would agree to observe basic standards of transparency and accountability to the public.

Rather than trying to stretch the EITI beyond its current purpose, which might cause tensions amongst the stakeholders and overload the initiative at a delicate stage, it would be better to convene different processes to address these problems, which could draw on the great success of EITI – its bringing together of governments, the private sector, and civil society into a multi-stakeholder process. As an interim measure, individual countries implementing the EITI, based on their individual context, should be encouraged to incorporate other critical issues, such as transparency in concession-allocation processes, and the social and environmental impacts of extraction.

4.2 Standards

Human Rights, Social and Environmental Standards

The record of oil, mining, and timber companies in Africa and elsewhere is very much related to bribery, bad environmental performance (Niger Delta, gold mining in Ghana and in the Philippines), and human rights concerns (Shell in Nigeria, oil companies working in Sudan, ExxonMobil in Indonesia). Large multinational corporations control much of the extractive industries and international trade flows of natural resources. Their policies and business practices have extraordinary effects on production patterns, community rights, environmental impacts, and social welfare.

While the rights of transnational companies on the international level are increasingly defended through compulsory arbitration before international tribunals (chapter 3), their duties are left to self-regulation. The answers or solutions the companies in the extractive industries offer for the problems they are facing are reflected in and – all too often – limited to a range of voluntary standards and codes of conduct. John Ruggie, the Special Representative of the UN Secretary-General on business and human rights, states in his report to the Human Rights Council that «a more fundamental institutional misalignment is present: between the scope and impact of economic forces and actors, on the one hand, and the capacity of societies to manage their adverse consequences, on the other. This misalignment creates the permissive environment within which blame-worthy acts by corporations may occur without adequate sanctioning or reparation. For the sake of the victims of abuse, and to sustain globalisation as a positive force, this must be fixed.»¹³

13 Report of Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/4/35, 19 February 2007.

Free, Prior, and Informed Consent

Indigenous peoples affected by extractive-industries projects must have the right to participate in, influence, and share control over development initiatives, decisions, and resources on their traditional territories. A central recommendation of the Extractive Industries Review,¹⁴ was that local and indigenous peoples' organisations must be able to exercise their right to free prior and informed consent. All communities, indigenous and non-indigenous, should be accorded the rights expressed in the Aarhus Convention:¹⁵ of timely and meaningful information, public consultation, and trusted grievance mechanisms that could resolve disagreements in a fair and just manner.

Existing Mechanisms and Solutions

Voluntary initiatives are an inherently weak instrument for changing corporate behaviour for various reasons. First, their voluntary nature means, obviously, that they only apply to companies which wish to comply to them: companies that do not have a high public profile, and are not exposed to external pressures from activist shareholders or campaigning organisations, may not feel any reason to comply.

Second, and especially in the field of human rights, these initiatives impose commitments on companies which are sometimes so loosely defined that it is very hard to know exactly what a company would have to do in order to comply with them. In addition, such initiatives often have very weak verification mechanisms, meaning that companies can easily claim to be complying with these initiatives without putting their principles into effective practice.

In short, this lack of clarity and lack of measurability means that some voluntary initiatives come close to being little more than public relations exercise for companies. If there is a strong case to be made for the regulation of companies in the public interest, then voluntary initiatives and codes can not be a substitute because they are not comprehensive and lack an effective system of sanctions.

Some of the most relevant initiatives related to the extractive industry are:¹⁶

■ *Voluntary Principles on Security and Human Rights*: The Voluntary Principles on Security and Human Rights, which are supported by a number of leading multinational companies in the oil and mining industries, were set up when Exxon and BP came under scrutiny after being accused of human rights violations committed by their security forces in Colombia and Indonesia. The principles are designed to set guidelines for dealing with public or private security forces, and to reduce the risk that their use would result in human rights abuses. However, there is little transparency about how the initiative works, no clear criteria for membership, and no mechanism to check whether or not companies are genuinely implementing the Voluntary Principles, meaning that companies which are doing little or nothing to improve their human rights practices can still claim credit for being part of the initiative. Companies now report on their activities, but the reports are not public. Some companies are making positive efforts to turn the Voluntary Principles into better human rights practice, and are quite open about what they are doing, but this is a product of the companies own initiative rather than the Voluntary Principles them-

14 «Striking for a Better Balance», EIRreview 2004.

15 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998. <http://www.unece.org/env/pp/documents/cep43e.pdf> (17 April 2007).

16 The codes and other voluntary initiatives related to the extractive sector are listed in the annex.

selves. Non-governmental organisations that belong to the initiative have threatened to walk out if these weaknesses in its structure are not addressed.

■ *International Council on Mining and Metals (ICMM)*: The ICMM Principles came out of a three-year participatory study called the Mining, Minerals and Sustainable Development Project (MMSD) which was managed by the International Institute for Environment and Development. The aim of the ICMM is to develop strategies for sustainable development in the mining industry, explicitly mentioning the improvement of social and environmental standards and the solution of conflicts between mining and nature conservation. Notwithstanding the importance of major mining companies committing themselves to improved standards, the Liberian and Zambian examples cited elsewhere in this paper illustrate that the voluntary approach is far from enough.

■ *Global Compact*: Based on 10 rather broad principles, the Global Compact provides a learning platform for companies. Although the Global Compact may be worthwhile to experience and promote best-practice examples, it proved to be inefficient when member companies violated the promise to fulfil the 10 principles. The Global Compact remained silent when, for example, a corruption scandal exposed a GC member, the German company Siemens AG, as violating the 10th principle of the GC on corruption and bribery.¹⁷ Similarly, Deutsche Bank, a leading member of the Global Compact, felt able to harbour billions of dollars of Turkmenistan's gas oil revenues.¹⁸

■ *OECD Guidelines on multinational enterprises*: The OECD Guidelines provide a set of principles for multinational companies on social and environmental performance, adherence to host countries' laws and tax regulations, and anti-bribery measures. Although they are voluntary, they established a formal complaint mechanism. The OECD countries committed themselves to establishing National Contact Points whereby complaints against companies violating the OECD guidelines can be presented. The scope of the OECD guidelines is worldwide, covering operations of companies hosted in OECD countries or those countries which have ratified the OECD guidelines. They have been used as a benchmark for the UN expert panel on «illegal exploitation of natural resources and other forms of wealth of the DR Congo» to name and shame companies violating international law and the OECD Guidelines. The report of the panel has been controversial as it did not publish robust evidence of the companies' involvement showing that the indicators and the procedures of the OECD Guidelines are not specific enough to provide a good benchmark for companies involved in conflict situations.

■ *Timber Certification Schemes*: There are a variety of certification schemes. The Programme for the Endorsement of Forest Certification (PEFC) is an umbrella for no less than 32 schemes, whilst the Forest Stewardship Council (FSC) is generally recognised as the highest standard currently available, but is not without its critics. To date, timber certification has not realised its potential. This is partly because the majority of the timber industry has so far opted not to become certified – the flaw in any voluntary system – and

17 «Stiftung und verdecktes Kontensystem in Liechtenstein: Geständnisse im Prozess um Siemens-Korruption», Handelsblatt, 13 March 2007.

18 Global Witness, *It's a Gas: Funny Business in the Turkmen-Ukraine Gas Trade*, 2006; In a letter to Global Witness dated 20 March 2007, Deutsche Bank stated that it did not hold an account for deceased Turkmen President Nyazov but rather for the Central Bank of Turkmenistan. It also stated that Deutsche Bank adheres to the UN Global Compact principles.

because there is an interminable debate between industry, governments, and NGOs as to the most appropriate scheme, which has resulted in both inaction and confusion..

Challenges for the G8

In general, the relatively wealthy and powerful nations of the global North have a disproportionate say in the creation of most initiatives. We need to redouble efforts to insure that the process of creating and administering standards is an inclusive dialogue at eye level. This requires inviting all actors (home and host countries of extractive industries) to participate on the basis of equality in the process of defining and administering standards.

Today there is no agency in the world that oversees and regulates multinational companies. The former UN Centre for Transnational Corporations, under the auspices of the Economic and Social Council of the UN (ECOSOC), was dismantled at the beginning of the 1990s when deregulation became the mantra of the global economy and self-regulation by companies replaced the efforts of international regulation. Since voluntary standards are clearly not enough, what is required is a level playing field for all companies on the international level. The authors urge the G8 to support the idea of creating a minimum set of international binding rules for companies in the field of human rights.¹⁹ The basis for compelling standards should be the International Labour Organisation's (ILO's) Core Labour Standards – the ILO convention on indigenous peoples and the UN covenants on Human Rights as well as the OECD guidelines and international agreements on environmental standards.

Nevertheless, we acknowledge that it sometimes takes a long time to create international standards and mechanisms for their enforcement. In the meantime, existing standards and guidelines, like the OECD Guidelines on Multinational Enterprises, should be implemented more effectively, and the G8 – as representing the home countries of many extractive-industries companies – should adopt standards and mechanisms to regulate companies' performance in developing countries. An example might be the «Canadian roundtable on Corporate Social Responsibilities and the extractive industry in developing countries». As a result of their work, they «urge the Government of Canada to adopt a set of CSR standards that Canadian extractive-sector companies are expected to meet and that is reinforced through appropriate reporting, compliance, and other mechanisms.»²⁰

Currently, different certification schemes for a variety of minerals (e.g., copper, cobalt and coltan) are being discussed by the G8 governments. They might improve transparency and initiate a process to improve environmental and social standards in the mining sector when done properly, and include civil-society organisations and the local communities. Certification might be an approach to build national consent in the producing countries on social and environmental standards as well as on the procedures to obtain prior informed consent. We see them as steps towards creating international rules for extractive-industries projects that create a level playing field for all and protect the rights of the affected people.

19 The discussion process on the need for binding rules has been initiated by the former UN Commission on Human Rights (now UN Council on Human Rights) and will continue over the next years – at least this is the proposal made by the Special Rapporteur on Business and Human Rights of the Secretary General of the UN in his report to the council in March 2007.

20 Advisory Group Report, National Roundtables on Corporate Social Responsibilities and the Canadian Extractive Industry in Developing Countries, 29 March 2007.

4.3 Conflict Resources

Since the end of the cold war, natural resources have played an increasingly important role in providing money to maintain and to prolong armed conflicts. Three of the world's worst wars of recent years took place in Sierra Leone, Liberia, and the Democratic Republic of Congo, resulting in around 5 million deaths and the almost complete destruction of these countries' infrastructures. In consequence, the international community has had to provide and fund amongst the three most expensive UN peacekeeping operations of all time: The bill for UNAMSIL's presence in Sierra Leone totalled US\$2.8 billion and cost the lives of 196 peacekeepers;²¹ this year the United Nations Mission in Liberia (UNMIL) will cost US\$745 million²² whilst in the DRC, MONUC's 2005/06 budget came to US\$1.13 billion.²³ On top of this are the massive costs of reconstruction and aid. Disturbingly, 50 per cent of countries coming out of civil conflict will return to war within a decade.²⁴

The following examples not only highlight the importance that the trade in natural resources play in sustaining armed conflicts, but they illustrate that the international community has utterly failed to address this problem. The ability of parties to a conflict to exploit natural resources depends on their access to external markets. Take away this ability and it will be much more difficult to exacerbate or sustain conflict. Conversely, failure to act means, de facto, that the international community is providing armed groups, failed states, and organised criminal groups with unfettered access to world markets. The international community needs to address resource-related conflicts in a way that tackles their particular character: in other words, by proactively addressing the economic underpinnings of the war, as well as the war itself. As these wars almost always affect regional security, the UN Security Council must play a key role in this.

21 <http://www.un.org/Depts/dpko/missions/unmil/facts.html>.

22 <http://www.un.org/Depts/dpko/missions/unmil/facts.html>.

23 <http://www.monuc.org/News.aspx?newsID=11533&menuOpened=About%20MONUC>.

24 Paul Collier, *Development and Conflict*, Centre for the Study of African Economies, Department of Economics, Oxford University, 1 October 2004.

Conflict diamonds and timber in Liberia: The civil war in Liberia, during which over a quarter of a million people died, provides perhaps the starkest example of military-political entrepreneurship driven by natural resource exploitation. It also illustrates how international action, in the form of UN sanctions, played a critical role in ending the war, but also how this action was very slow in coming; two years in fact. Warlord Charles Taylor financed his armed insurrection in 1989 by using revenue generated from the sale of timber and diamonds. After gaining power in 1997, he then proceeded to sponsor the infamous Revolutionary United Front (RUF) in its struggle in Sierra Leone, supplying arms and materiel in exchange for diamonds from the rich Sierra Leonean diamond fields. As a result of UN sanctions on diamonds in 2001, Taylor's government was forced to rely on timber revenues; production increased, generating a minimum US\$100 million off-budget in 2000 alone,^{25,26,27} whilst logging companies close to Taylor smuggled arms into the country in violation of the UN arms embargo, and provided armed militias for use by Taylor. It took two years after timber was first identified as a key conflict resource, by NGOs, before the UN Security Council imposed sanctions on timber in May 2003. Within weeks, with his funding cut off, Charles Taylor was forced into exile in Calabar, Nigeria, and the war was over.

Conflict resources in the Democratic Republic of Congo: In terms of human casualties, the war that ripped apart the DRC was the worst since World War II, resulting in over four million dead, and is perhaps the greatest example of a resource-fuelled war. The armies and proxy militias of six different countries, as well as those of the Congolese government and numerous rebel groups, plundered and looted the country's vast natural-resource wealth, including coltan, gold, cassiterite, copper, cobalt, timber, diamonds, and other precious stones. Two of the DRC's neighbours, Rwanda and Uganda, played an active role in the exploitation of the country's natural resources throughout the conflict. Although the UN Security Council imposed an arms embargo on armed groups operating in eastern DRC, it has not taken strong action to address the role played by natural resources in driving the conflict. Despite broad international recognition of the links between natural resource exploitation and conflict in the DRC, detailed recommendations in the UN Panel of Experts' reports on this issue have not been adequately followed up.

25 «Log Indicative Values,» Hardwood Markets.com, 16(4), April 2001.

26 Central Bank of Liberia, Annual Report, 2000.

27 OTC Notes, anon document, 2000.

Existing Mechanisms and Solutions - The Kimberley Process

The Kimberley Process Certification Scheme (KP) has been the only significant international response to the conflict resource issue. The KP is an international government-led scheme that was set up to prevent the trade in conflict diamonds. Negotiated by governments, civil-society organisations, and the diamond trade in response to civil-society campaigns, the KP currently comprises 71 participants: 46 countries²⁸ and the European Union. Launched in January 2003, and endorsed by the UN General Assembly and the UN Security Council, the scheme requires governments to certify the origin of shipments of rough diamonds to ensure they are not from conflict zones. Countries that participate must pass legislation to enforce the Kimberley Process and set up control systems for the import and export of rough diamonds.

The Kimberley Process is currently not funded and is run by those who volunteer time and resources. This is not sustainable and places an undue burden on those who volunteer.

There are serious shortcomings related to the definition of conflict diamonds by the Kimberley Process as it only applies to diamonds traded by rebel groups (what if governments use them to finance severe human rights violations?) and only to rough diamonds.

Challenges for the G8

The Kimberley Process is definitely no «one size fits all» solution. Other certification or tracing schemes might provide a partial solution but it is not feasible to set up a Kimberley Process for every single natural resource traded in order to fuel conflict. The certification of single commodities will not provide a consistent answer of the international community to the problem of conflict resources.

The authors believe that the international community, led by the Security Council, should put a comprehensive deterrent strategy in place to stop natural resources from fuelling conflict and resultant human rights violations and deny violators access to resources.

As referred to above, the devastating wars that took place in Sierra Leone, the DRC, and Liberia were fuelled by the international trade in natural resources from those countries, as is the extremely volatile situation in Cote d'Ivoire today. A whole range of actors, ranging from governments to multinational companies to groups linked with organised crime, have been exporting billions of dollars worth of natural resources across the world, thereby directly funding armed factions responsible for some of the most brutal human rights abuses that have ever taken place. Yet not one single company nor individual has been convicted for trading in conflict resources.²⁹ The reason for this lack of convictions is simply that trading in conflict resources is not illegal. What happened in the DRC and Liberia could happen again tomorrow.

Currently, although the phrase «conflict resources» is widely used by policy makers and others, there is little understanding about what a conflict resource actually is. Often they are spoken of as an «illegal» resource trade from conflict zones, but the trade in Liberia's resources was legal under Taylor's Strategic Commodities Act. Other conflict zones are often a legal vacuum, and the concept of legality has no meaning. The fact is that

²⁸ Including Brazil, India, and China.

²⁹ In 2006 Dutch timber baron Gus Kouwenhoven was convicted of breaking the UN arms embargo on Liberia.

the trade in natural resources that fund conflicts can be legal or illegal, resources can be traded by sovereign governments or by rebel groups, and they can fund both legitimate and illegitimate wars.

Therefore, there is a clear need to provide a normative definition of what a conflict resource is in order to highlight the challenges posed by conflict resources to the international community and to act as a catalyst for a coordinated international response. Global Witness³⁰ suggests that a conflict resource can be defined as one that would trigger United Nations action – under their responsibility to protect civilians – either because of the resource's contribution to conflict situations where civilians' human rights are abused and/or where individuals who derive income from natural resource extraction are breaking the laws of war by deliberately targeting civilians. A definition based on these humanitarian precepts has four clear advantages: 1. it does not require the international community to make a pejorative judgement about any side in the conflict; 2. it does not single out any particular resource, merely the circumstances in which it is traded; 3. it is based on existing international norms; 4. it would trigger existing enforcement mechanisms, such as targeted sanctions (a definition would not require developing new enforcement mechanisms).

The authors believe that the G8 should urge the UN Security Council to begin a process of endorsing a definition of Conflict Resources. There are some compelling arguments to do this:

■ The international community has recognised its collective «responsibility to protect» civilians from genocide, war crimes, ethnic cleansing, crimes against humanity, or serious violations of international humanitarian law, when states are unable or unwilling to provide such protection during a conflict or grave crisis.³¹ This includes a more prominent role for the Security Council in conflict prevention.³² The problem of conflict resources should be addressed as part of this emerging consensus on collective security.

■ The UN has already accepted the idea of defining a conflict resource through the Kimberley Process. However, a common definition of conflict resources would eliminate the need for the current inconsistent and unsystematic piecemeal approach and it would prevent the need for a «Kimberley Process»-type initiative for every natural resource. Replicating the KP for other resources is probably unworkable for several reasons, including: the circumstances that led to the creation of the KP were unique;³³ logistically, extending

30 The Sineus of War, November 2006, <http://www.globalwitness.org>.

31 Security Council Resolution, S/RES/1674, 2006.

32 The international community's commitment to the «responsibility to protect» has been endorsed in a resolution adopted by the UN General Assembly in 2005 and then in April 2006, for the first time, the Security Council resolution on the protection of civilians in armed conflict, explicitly affirmed the responsibility of the international community to act to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, S/RES?1674, 2006. See:

33 The unique circumstances for the creation of the KP are the following: 1. There was an outstanding major player, De Beers, responsible for >60 per cent of rough diamond purchases. DB was thus very vulnerable to pressure – both from the public and governments, but once on board, they posed a credible threat to others in the industry. 2. Diamonds have no intrinsic value and are not actually useful (unlike oil, copper, coltan, etc.), which adds to the industry's vulnerability. 3. Conventional sanctions are not effective against diamonds – they're too easy to hide. 4. The diamond trading community is relatively small, and the members all know each other. 5. The scale and nature of the killings in Africa were extraordinary in their brutality. 6. A few individuals played a key role in forming the KP.

the KP to other resources is probably unworkable; and a KP-type approach to an as yet uncertified resource being traded at the height of a conflict would not address the problem in time.

■ Without an internationally accepted definition, there can be no international or domestic law to govern the trade in conflict resources.

■ A definition would provide a clear guideline, and a deterrent to companies trading, or considering trading, in a conflict zone, as to whether they would be trading in a conflict resource. For legitimate companies, their due diligence procedures would prevent them from entering such trade in the first place.³⁴

By way of illustrating the rationale behind the idea of a definition, Global Witness proposes the following definition of conflict resources to invoke international action, as a starting point for a debate that can lead to an agreed definition: *Conflict resources are natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law.*

4.4 Governance in the Finance Sector

Whether natural resource extraction deals are corrupt or linked to organised crime or arms trafficking, they all require and generate money. Therefore, behind each corrupt natural resource deal there is usually a bank, and often a network of opaque offshore companies and trusts through which the money is funnelled.

It is financial institutions that provide the means for moving stolen resources and it is financial institutions that provide the necessary funding for predatory natural resource extraction deals. In some cases they make themselves complicit in corruption by providing oil-backed loans to corrupt regimes which can no longer obtain loans from the international financial institutions.

The last few years have witnessed a huge increase in the network of laws and regulations to control the first problem, that is, deposits of funds from corrupt sources. Banks are now required to comply with extensive anti-money laundering requirements, including «know your customer» due diligence and the provision of suspicious activity reports to national financial intelligence units. Nevertheless, there are still more than 100 money laundering havens throughout the world. The Financial Action Task Force on money laundering³⁵ and the UN model bill on money laundering³⁶ are some measures which are going in the right direction but are far from being enough.

State resources continue to be stolen by way of corruption, and despite all the money laundering rules, the money continues to find its way into the international financial system. Last year, for example, Global Witness revealed that Deutsche Bank in Frankfurt was holding billions of dollars of Turkmenistan's public revenues in accounts controlled

³⁴ Conversations Global Witness has had with mining companies suggest that they broadly agree with this point and that a red flag from the UN would be helpful for their own risk management procedures and guide their managers in conflict zones.

³⁵ The FATF was founded in 1989 by the G7 and the EU Presidency; see: <http://www.fatf-gafi.org>.

³⁶ <http://www.imolin.org>.

by the late President Niyazov.³⁷ The dictator was reported to be using the funds for his bizarre vanity projects while the population went without basic services. Deutsche Bank is a member of the Wolfsberg Group³⁸ of 12 leading international banks which claim to be setting high standards for due diligence on such «politically exposed persons». Such voluntary initiatives are clearly not enough.

On the other side, the provision of finance in natural resource deals has received far less legislative or regulatory attention. Oil-backed loans to corrupt regimes make the lending bank complicit in corruption. They increase that country's usually already considerable debt and mortgage the country's patrimony (future oil production) with little benefit to the population since much of the money may be siphoned off into the offshore accounts of corrupt elites.

There is a growing emergence of new financial actors in the international resource sector as well. China Exim Bank and other financial institutions are important players on the global scene offering credits and guarantees for Chinese overseas investments in the extractive and other sectors. With a loan volume of US\$20 billion in 2005, China Exim Bank has become one of the world's largest export credit agencies. (<http://www.im.org>)

Existing Mechanisms and Solutions

Banks need to be made accountable for oil-backed and other loans, particularly when they undermine attempts by the international community and international financial institutions to control the flow of money to corrupt regimes.

The two most well-known global banking initiatives are the «Equator Principles», which sets social and environmental standards for project finance deals, and the «Wolfsberg Group», which has developed a set of anti-money laundering principles. Both are voluntary initiatives.

The G8 have recognised that tackling corruption and kleptocracy is a priority. Those G8 members who have been involved in the development of the Extractive Industries Transparency Initiative have already openly acknowledged the particular ways in which resource extraction is vulnerable to corruption, and that one of the solutions is transparency about who is paying what to whom.

Challenges for the G8

The G8 now need to go a step further and recognise that those involved in the money side of resource extraction – whether by banking the proceeds or providing the financing – are also vulnerable to collusion in corruption. We are calling for mandatory transparency of financing for resource projects. This includes an end to resource-backed loans for governments that refuse to manage the resource revenues in a transparent manner, and the amendment of the money laundering regulations recognising that resource deals and resource-backed loans are a significant red flag for money laundering and should warrant «enhanced due diligence».

³⁷ Global Witness, *It's a Gas: Funny Business in the Turkmen-Ukraine Gas Trade*, 2006; In a letter to Global Witness dated 20 March 2007, Deutsche Bank stated that it did not hold an account for deceased Turkmen President Niyazov but rather for the Central Bank of Turkmenistan.

³⁸ Wolfsberg Anti-Money Laundering Principles, see: <http://www.wolfsberg-principles.com>.

Pressure to further deregulate the banking and financial sector (including the changes brought about by the Basle II accords³⁹) should not jeopardise the regulatory framework aimed at preventing the transfer of funds generated by operations with conflict resources and other corrupt practices. The existing platform of banking regulatory practices needs to be strengthened and adapted to the realities of transfer of funds related to conflict resources. In particular, because deregulation in many parts of the financial sector stifles efforts to control the origins and movement of funds (in spite of supervision in banks and policing regulations) there needs to be a new approach to the control of these funds. In order to proceed with the design of a healthier regulatory framework, the following two lines of action should be pursued:

■ *Basle Committee on Banking Supervision:* The Basle Committee on Banking Supervision needs to establish mandatory guidelines covering transactions, deposits, and movements of funds related to conflict resources. Its concern with the social and environmental complexities of project finance should be extended to cover transactions, deposits, and movements of funds related to conflict resources (and resources that threaten social welfare and environmental sustainability).⁴⁰ One way to get started in this area is to establish a Working Group within the Policy Development Group, which is charged with the task of identifying and reviewing emerging supervisory issues and proposing and developing policies that promote a sound banking system and high supervisory standards.⁴¹ Social responsibility and environmental sustainability are certainly two pressing, emerging supervisory issues.

■ *Joint Forum of Basle Committee:* In addition, the Joint Forum of the Basle Committee on Banking Supervision should address the issue of transactions with funds generated by conflict resources and projects where social responsibility and environmental sustainability are critically compromised. Banking regulations are insufficient to control capital flows generated from these wrongful practices. Movements of these funds through non-bank financial institutions, and especially through financial conglomerates, need to be monitored if meaningful regulations are to be established. The Joint Forum addresses issues that are common to the banking, securities, and insurance sectors, and from this standpoint, it can provide a starting point for the design of meaningful supervisory standards in this field.⁴²

39 Basel II refers to the banking supervision accords (recommendations on banking laws and regulations), issued by the Basel Committee on Banking Supervision (BCBS). These accords went into effect in 2006.

40 Project finance is «a method of funding in which the lender looks primarily to the revenues generated by a single project, both as the source of repayment and as security for the exposure. This type of financing is usually for large, complex, and expensive installations that might include, for example, power plants, chemical processing plants, mines, transportation infrastructure, environment, and telecommunications infrastructure. In such transactions, the lender is usually paid solely or almost exclusively out of the money generated by the contracts for the facility's output, such as the electricity sold by a power plant. The borrower is usually an SPE (Special Purpose Entity) that is not permitted to perform any function other than developing, owning, and operating the installation. The consequence is that repayment depends primarily on the project's cash flow and on the collateral value of the project's assets.» Source: Basel Committee on Banking Supervision, International Convergence of Capital Measurement and Capital Standards («Basel II»), November 2005. <http://www.bis.org/publ/bcbs118.pdf>.

41 There are currently five working groups reporting to the Policy Development Group: 1. Risk management and Modelling Group; 2. Research Task Force; 3. Working Group on Liquidity; 4. Working Group on the Definition of Capital; 5. Basle II Capital Monitoring Group.

Furthermore, Export Credit Agencies will have to establish transparency as a core criterion for their export credits and exclude those companies which are involved in corruption and bribery from access to export credits.

42 The Joint Forum was established in 1996 to address issues common to the banking, securities, and insurance sectors, including the regulation of financial conglomerates. The Coordination Group is a group of supervisory standard setters comprising the Chairmen and Secretaries General of the Committee, the International Organisation of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS), as well as the Joint Forum Chairman and Secretariat (at the Basle Committee). The Coordination Group meets twice annually to exchange views on the priorities and key issues of interest to supervisory standard setters.

V FORESTS – TIME FOR A CHANGE

A recent World Bank study concludes: «Industrial timber production has a poor track record in Africa. Over the past 60 years, there is little evidence that it has lifted rural populations out of poverty or contributed in other meaningful and sustainable ways to local and national development.»⁴³ And on 25 July 2006, Baroness Amos, the UK Government's House of Lords spokesperson on international development said: «There is a growing consensus that the traditional concession-based industrial logging model does not generate the desired economic, social and environmental benefits.»⁴⁴

Forests occupy a different paradigm than oil and gas production and large-scale mining because 1 billion people living in extreme poverty depend partly upon forests for their livelihoods, and as many as 350 million people living in and around forests are heavily dependent on them. Furthermore, forests are of immense ecological importance, host most of the richest biodiversity hot spots in the world, and are an extremely important factor in mitigating climate change. In Africa, many countries have virtually depleted their forests. In West Africa, for example, the Upper Guinea forest ecosystem that once stretched from Guinea through Sierra Leone and up to Togo has shrunk to 12.7 per cent of its original size.⁴⁵ A 1997 report stated that «Almost half of the planet's original forest has been destroyed, mostly during the last three decades.»⁴⁶

The single greatest threat to the world's tropical forests is that the governments of tropical forest-rich countries – usually led by the economists and forest experts of the international donor community, especially the World Bank – invariably accept the model of an industrial-scale export-based logging industry as a key economic driver to kick start poor economies. The model of industrial logging is promoted at the expense of the development of alternative forest uses, which are relegated to the areas not allocated to timber concessions, and often comprise already degraded land. However, experience has shown that this model does not work: Industrial logging, in fact, exacerbates poverty, has brought no durable economic benefit to the countries concerned, has resulted in widespread ecological destruction and resource loss virtually everywhere it has been tried, is a source of extensive corruption, and has provided the funding for some of the world's most brutal conflicts. On a global scale, the World Bank estimates that each year, governments lose \$5 billion in revenue to illegal logging, and another \$10 to \$15 billion are lost to the economies of developing nations⁴⁷ – more than six times the total of official development assistance dedicated to the sustainable management of forests.⁴⁸ Around 40 per cent of illegally traded timber is imported by G8 nations.⁴⁹ For example:

43 CIFOR, World Bank and CIRAD, *Forests in Post-conflict Democratic Republic of Congo, Analysis of a Priority Agenda*, 2007.

44 Available at: <http://www.publications.parliament.uk/pa/ld199697/ldhansrd/pdvn/lds06/text/60725w0262.htm>. Accessed March 2007.

45 SAMFU, *Plunder: The Silent Destruction of Liberia's Rainforest*, 2002.

46 WRI/WCMC/WWF, 1997.

47 World Bank, *A Revised Forest Strategy for the World Bank Group*, Washington, D.C., 2002

48 http://siteresources.worldbank.org/INTFORESTS/Resources/ForestLawFINAL_HI_RES_9_27_06_FINAL_web.pdf?

49 <http://www.globaltimber.org.uk/G8IllegalTimber.htm>.

Cambodia:⁵⁰ According to the World Bank's Internal Inspection Panel Investigation Report (investigating the Bank's own forestry projects in Cambodia): «... one could hardly overemphasise the negative effects of the [industrial] logging on a natural habitat of world class value and most importantly on very poor and vulnerable rural communities and indigenous peoples.»

Liberia: Following 14 years of brutal civil conflict, the Liberian government commissioned a broad-based timber concession review. Of the 70 forest operators in the country, only 47 brought forward agreements granting them permission to operate.⁵¹ At the end of the review, the committee found that no concession holder met the minimum legal requirements to operate. This, in effect, rendered all of Liberia's timber export between 1990 and 2003 illegal.⁵² Seventeen concessionaires were identified to have aided and abetted the conflict in Liberia.

In addition to the failures of the industrial model, according to former World Bank chief economist and current Head of the UK Government Economics Service, Sir Nicholas Stern, climate change will cost the world up to £3.68 trillion (about \$7 trillion) unless it is tackled within a decade. The Stern «Review on the Economics of Climate Change», issued on 30 October 2006, found that: «Emissions from deforestation are ... estimated to represent more than 18 per cent of global emissions [of CO₂], a share greater than is produced by the global transport sector.»⁵³

This last fact provides an imperative to act both from the forest and climate change perspective. The bulk of the forests of most tropical countries have already been allocated as either timber concessions, community forests, or protected areas. Where there is commercial logging it should, ideally, be certified. However, the forests of both Liberia and the DRC are largely unallocated and, in early 2007, present the world with an unrepeatability opportunity to explore alternative uses of the forest that will truly benefit these countries and their populations, and that will contribute to the global good. The DRC contains one of the two largest remaining forest blocks on the planet, second only to the Amazon. Currently this forest is largely unallocated as industrial concessions and, due to its size, represents a vital weapon in the world's armoury against climate change. These forests will shortly be divided up as concessions (in the DRC under the auspices of the World Bank), which will subject these forests to the same risks that have so negatively affected other forests in Africa, and therefore the opportunities for change will probably be lost forever.

China has a major role to play as a major consumer of timber. Since the imposition of its own logging ban in 1998, due to links between deforestation and serious floods and landslides, China has exported much of its demand for timber. For example, in 1999 China imported no timber from Liberia, but by 2000 it was the single biggest importer of

50 www.globalwitness.org

51 Report of Forest Concession Review Committee, May 2005..

52 Illegal logging takes place when timber is harvested, transported, bought or sold in violation of national laws; D. Brack and G. Hayman, Intergovernmental Actions on Illegal Logging, 2001.

53 Stern review, The Economics of Climate Change, page xxv.

Liberian timber; all of which was illegal.⁵⁴ Although, as with many other resources, China's demand for timber is low per capita, but its overall and growing demand is a major influence on world markets which will contribute – as does demand from any country – to the already critical threats faced by the world's forests. We should note that China does not consume all the timber it imports, but processes and exports much of it. For example, around 40 per cent of all wooden furniture sold in the United States is manufactured in China.

Existing Mechanisms and Solutions

Currently, other than China, there is – remarkably – no country in the world that prevents the import of illegally-sourced timber.⁵⁵ While producing countries do have serious responsibilities to deal with this problem, they can not do so as long as there is no effective action in consuming countries. Illegal timber imports into the G8 account for approximately 40 per cent of the illegal timber in trade.⁵⁶ The main international mechanism to address these issues is the Forest Law Enforcement and Governance (FLEG) initiative, but thus far it has done little, if anything, to curb illegal timber flows.

FLEG is a World Bank-sponsored ministerial-level mechanism to address forest crimes and violations of forest laws. FLEG started in South East Asia with a ministerial meeting and the 2001 adoption of the Bali Declaration followed by Africa (AFLEG) in 2003 and Europe and North Asia (ENAFLEG) in 2005. However, little progress has been made on the ground and the AFLEG Ministerial Declaration of 2003 remains largely a paper exercise. Political will within most governments to implement reforms are weak, and where forest-sector reforms have been initiated, they have been as a result of international pressure.

The Forest Stewardship Council (FSC) is an international organisation for promoting responsible stewardship of the world's forests. While there is great doubt amongst civil-society groups and forest experts whether the FSC really allows for sustainable forest uses, it is widely accepted as the best existing certification scheme that is being implemented.

Challenges for the G8

The G8 and EU countries should impose legislation banning the importation of illegally sourced timber. By allowing the laundering of illegal timber into the G8 and Europe, these countries are directly undermining the economies of timber-exporting countries.

G8 governments should ensure that their own procurement policies require that they only purchase timber from sustainable and legal sources. Thus far, some governments, including Germany, have committed to buying timber approved by various certification schemes. FSC certification should serve as a benchmark for timber imports from countries where the concessions have already been given out.

The G8 countries and other wealthy nations should pay forest-rich-but-poor countries to preserve their forests as a global good – particularly focussing on avoided deforestation to combat climate change – and to help them to develop governance mechanisms to ensure that these revenues benefit not only the central government, but also forest

54 The Liberian Forest Concession Review process found that the Oriental Timber Company (OTC) and the parent company, Liberia Forest Development Corporation (LFDC), operations in Liberia were illegal.

55 In March 2007 the Legal Timber Protection Act was introduced to the US Congress. If it is passed, it will mark the first law banning the importation of illegally sourced timber.

56 <http://www.globaltimber.org.uk/G8IllegalTimber.htm>.

communities and the population as a whole. In order to do this, they need a process/dialogue with concerned countries to bring this about, and to explore alternative uses of the forest which will be pro-poor, sustainable, and will mitigate the effects of climate change. The DRC would be an excellent first case given the unique possibilities of the moment and the global significance of the forest, which stores around one-third of all the carbon in Africa. These recommendations are in line with the Stern Review's recommendation that forest-rich-but-poor countries «should receive strong help from the international community, which benefits from their actions to reduce deforestation.» The Stern Review estimates that the opportunity cost of forest protection in eight countries responsible for 70 per cent of emissions from land use could be around \$5 billion annually.⁵⁷ This is around half of the \$10 billion a year lost through illegal logging.

Alternative forest uses could include:

- Enhancing and regulating traditional forest economies, such as the sale of timber for construction and fuel, and non-timber-forest products, including foods and medicines;
- Continuing to identify and manage protected areas to benefit indigenous peoples and preserve biodiversity;
- Eco-tourism and scientific purposes.

57 For more information, see: http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm.

VI ANNEX : COMPENDIUM OF EXISTING INITIATIVES

6.1 Certification Schemes

Kimberley Process

The Kimberley Process Certification Scheme (KP) is an international government-led scheme that was set up to prevent the trade in conflict diamonds. Negotiated by governments, civil-society organisations, and the diamond trade in response to civil-society campaigns, the KP currently comprises 71 participants: 46 countries and the European Union. Launched in January 2003, and endorsed by the UN General Assembly and the UN Security Council, the scheme requires governments to certify the origin of shipments of rough diamonds to ensure they are not from conflict zones. Countries that participate must pass legislation to enforce the Kimberley Process and set up control systems for the import and export of rough diamonds. Since its conception, the Kimberley Process has heralded a new approach to regulating the natural resource trade, setting an important precedent for subsequent global initiatives, such as the Extractive Industries Transparency Initiative. The Kimberley Process participants (governments) and observers (the diamond industry, NGOs) meet once a year to discuss the implementation of the scheme. Working groups monitor participants' implementation of the scheme, assess applications to join, gather and analyse statistics, and discuss technical issues. In 2006 there was a formal three-year review to assess its effectiveness and make recommendations to strengthen the scheme, presenting a crucial opportunity to close serious loopholes. Despite some progress, there are still significant outstanding issues to be addressed to ensure the KP is credible and effective in practice.

→ <http://www.kimberleyprocess.com:8080/site/>

FSC (Forest Stewardship Council)

Over the past 12 years, some 84 million hectares in 82 countries have been certified according to FSC standards while several thousand products are produced using FSC-certified wood and carry the FSC trademark. The FSC operates through its network of National Initiatives in 39 countries. The FSC certification is carried out by FSC-accredited certification bodies. The FSC itself does not certify forest operations or manufacturers. There are two types of FSC certificates available from certification bodies: Forest Management (FM) Certificate and Chain of Custody (COC) Certificate.

The Certification Scheme is based on 10 Principles and adjusted to the regional conditions:

1. Compliance with laws and FSC Principles
2. Clearly defined land tenure and use rights and responsibilities
3. Respect of indigenous Peoples' rights
4. Community relations and Workers' rights
5. Benefits from the forests: Forest management operations shall encourage the efficient use of the forest's multiple products and services to ensure economic viability and a wide range of environmental and social benefits.

6. Environmental impact: Forest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest.

7. Implementation of management plan

8. Monitoring and assessment to assess the condition of the forest, yields of forest products, chain of custody, management activities and their social and environmental impacts.

9. Maintenance of high conservation value forests

10. Plantations: Plantations shall be planned and managed in accordance with Principles and Criteria 1–9

→ <http://www.fsc.org>

6.2 Transparency

EITI (Extractive Industries Transparency Initiative)

The EITI aims to improve transparency and accountability in resource-rich countries through the full publication and verification of company payments and government revenues from oil, gas, and mining.

Some 20 countries have already either endorsed, or are actively implementing EITI across the world – from Peru, to Trinidad and Tobago, Azerbaijan, Nigeria, and East Timor.

The EITI is becoming increasingly significant as a partial solution to the problem of corruption in energy-rich developing countries. A new Board was put in place in 2006, with members drawn from governments, civil society and industry, and is supported by a secretariat which should ensure much more co-ordinated support for EITI implementation around the world than in the past.

The EITI Secretariat has developed an EITI Source Book that provides guidance for countries and companies wishing to implement the initiative.

→ <http://www.eitransparency.org>

PWYP

The Publish What You Pay campaign was founded in 2002 by Global Witness, CAFOD, Save the Children UK, Oxfam, Transparency International UK, and George Soros, Chairman of the Open Society Institute. There are now over 300 NGO members of the PWYP coalition and more than 20 national civil-society coalitions around the world that have been formed to work towards greater transparency in the management of revenues from the extractive industries.

PWYP calls for multinational and state-owned oil, mining, and gas companies to reveal the same basic information about net payments to a state in the developing world. These payments include:

■ Royalty payments denominated as a percentage value of production;

- Bonus payments on signing a contract, on the location of commercial mineral deposits, or on reaching certain production levels;
- Corporate income tax, paid on income after permitted deductions for operating, exploration and interest costs, and depreciation of assets;
- Other taxes including withholding tax on dividend payments, excise tax, customs duties, sales/value-added tax and property tax.

PWYP has supported the EITI since its inception and actively promotes its implementation at the country level. The coalition also seeks changes to laws, accounting standards, and stock exchange listing rules in «home» governments so that extractive companies are required to disclose payments for every country in which they operation. Other mechanisms at the international level that PWYP pursues include urging international financial institutions, private sector banks, and export credit agencies to incorporate revenue transparency into the conditions of technical and financial assistance programmes to resource-rich developing country governments as well as the conditions of investment support for oil, gas, and mining projects.

→ <http://www.publishwhatyoupay.org>

6.3 Voluntary Codes of Conduct and CSR

Voluntary Principles on Security and Human Rights

The Voluntary Principles on Security and Human Rights were established in 2000, following meetings between representatives from the US Department of State and the UK Foreign and Commonwealth Office, oil, mining, and energy companies, and human rights, labour, and corporate responsibility groups. The process aims to maintain the safety and security of extractive operations whilst ensuring that human rights and fundamental freedoms are respected.

The IBLF, jointly with Business for Social Responsibility, has provided the Secretariat for the Voluntary Principles since January 2004.

The Voluntary Principles are designed to provide practical guidance that will strengthen human rights safeguards in company security arrangements and address three areas of mutual concern to both companies and non-governmental organisations:

- Engagement with private security;
- Engagement with public security;
- Risk assessment supporting security arrangements consistent with human rights.

The Voluntary Principles have been criticised by various NGOs as they are not transparently managed and lack any kind of monitoring mechanism.

→ <http://www.iblf.org/activities/networks/volprinciples.jsp>

Global Compact

In an address to the World Economic Forum on 31 January 1999, the former Secretary-General of the United Nations, Kofi Annan, challenged business leaders to join an international initiative – the Global Compact – that would bring companies together with UN agencies, labour, and civil society to support universal environmental and social principles. The basis of the Global Compact are 10 principles in the areas of human rights, labour, environment, and anti-corruption.

The Global Compact is a purely voluntary initiative with two objectives:

- Mainstream the 10 principles in business activities around the world
- Catalyse actions in support of UN goals

→ <http://www.unglobalcompact.org>

Table 1: CSR instruments of some oil companies →

Company	Country	Corporate Governance, Codes of Conduct	Member of the Global Compact	Member of the Voluntary Principles
Exxon Mobil	USA	Code of Ethics and Business Conduct, Corporate Citizen Report	no	yes
Royal Dutch Shell	Netherlands/UK	Code of Conduct, Sustainability Reporting	yes	yes
BP	UK	Code of Conduct, Sustainability Reporting	yes	yes
Chevron	USA	Business Conduct and Ethics Code, Human Rights Statement	no	yes
Conoco Philips	USA	Sustainability Reporting	no	yes
Total	France	Ethical Business Principles	yes	no
Eni	Italy	Code of Practice	yes	no
Petrobras	Brazil	Code of Ethics, Petrobras Zero Hunger Guidelines	yes	no
Petrochina	China	Code of Ethics of Employees of Petochina Company Ltd.	no	no
Marathon Oil	USA	Code of Business Conduct	no	yes
Repsol	Spain	Code of Ethics, Corporate Reponsibility Reporting	yes	no
Statoil	Norway	Code of Ethics, Member of Business Leaders Initiative on Human Rights	yes	yes

ICMM

ICMM was formed in October 2001 to represent leading international mining and metals companies. In 1999, nine of the world's largest mining companies launched the Global Mining Initiative that led to the commissioning of the Mining, Metals and Sustainable Development (MMSD) project which culminated in 2002's Breaking New Ground report. ICMM was formed to take forward the agenda identified in the report towards achieving sustainable development (ICMM Sustainable Development Framework).

→ <http://www.icmm.com>, <http://www.iied.org/mmsd>

6.4 Financial Institutions

World Bank / International Finance Corporation (IFC) Safeguards

The Safeguard Policies, adopted in 1998, have served as the basis for IFC's leadership on social and environmental sustainability.

Under a new policy framework for managing the social and environmental risks of projects the IFC finances in emerging markets, the Safeguard Policies have been recast as IFC Policy and Performance Standards on Social and Environmental Sustainability:

■ Policy and Performance Standards on Social and Environmental Sustainability (April 2006);

■ Policy on Disclosure of Information;

■ EHS Guidelines Environmental, Health & Safety (EHS).

→ <http://www.ifc.org/ifcext/policyreview.nsf/Content/SafeguardPoliciesUpdate>

Extractive Industries Review (EIR)

In 2001 the World Bank Group (WBG) initiated the Extractive Industry Review in response to criticism from NGOs about the WBG's involvement in this sector. World Bank President James Wolfensohn appointed Dr Emil Salim, former Minister of the Environment and Population in Indonesia, as the Eminent Person to head the review. After several regional workshops, intensive international debate, and the preparation of six case studies, the final report, «Striking a Better Balance», was released in December 2003.

→ <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC0,,contentMDK:20306686-menuPK:336936-pagePK:148956-piPK:216618-theSitePK:336930,00.html>

The EIR's main conclusions include the following:

■ The WBG should only support extractive sector projects if these contribute directly to poverty alleviation and sustainable development.

■ The WBG should sequence its investments in support of extractive industries to ensure that adequate governance conditions concerning the equitable use of revenues as well as the protection of human rights and the environment are in place prior to launching investments in this sector.

■ The WBG should rebalance its lending portfolio to give equal importance to the economic, social, and environmental aspects of its activities.

■ The WBG should phase out investments in oil production by 2008 and devote its limited scarce resources to investments in renewable energy, emission-reducing projects, energy efficiency, and others.

In mid-2004 the WBG responded to the EIR by rejecting both EIR recommendations of sequencing its investments to ensure adequate governance and phasing out support for fossil fuels.

→ <http://www.ifc.org/eir>

Equator Principles and Wolfsberg Principles

The Equator Principles have been adopted by dozens of global, regional, and local banks around the world, who, by signing up, pledge not to finance projects that violate the principles. However, due to a lack of awareness of the principles and a lack of monitoring and enforcement, the Equator Principles have until now amounted to little more than a PR exercise and a piece of readily available corporate governance rhetoric for its signatories. Indeed, 11 of the signatory banks lobbied the World Bank not to adopt the recommendations of the Extractive Industry Review.

Also, as the Equator Principles only cover project finance, they are only narrowly applicable to the problems of banks taking in natural-resource revenue from corrupt regimes and/or extending loans to corrupt state companies and/or financing predatory deals with governments. These problems have to be tackled rather from a financial legislative angle and by addressing the lack of enforcement of already existing legislation.

The Wolfberg Group's (WG) work goes in this direction. It is an association of 12 leading global banks that developed guidelines on anti-money laundering, Know-Your-Customer, and terrorist finance legislation, with the aim of helping banks meet the necessary legal requirements. A positive aspect of the WG's work is that it is clearly active and more or less continuously sends out new impulses and ideas on how to move the debate on these issues further. Also, the recommendations put forward on how banks should conduct their due diligence are very strict and thorough (for example, on the disclosure of beneficial ownership or on politically exposed persons). This means that it is a useful source for legal research for anyone interested in banking compliance duties.

However – and this is a big caveat – the Wolfsberg Group is an industry initiative which is always aimed at minimising legal risks (covering the necessary, legal obligations) and costs for the banks' compliance work (doing as little as possible and as efficiently as possible to meet these obligations). Also, it is voluntary, which means that it has nothing to do with controlling whether banks are actually complying. The Wolfsberg Group is best understood as an industry forum which is used by banks' compliance officers to keep each other updated on legal developments and exchange guidelines on how to do their job. Obviously, this means that it is inadequate for addressing the concerns of civil society about where money from corruption is flowing to.

6.5 The OECD Guidelines for Multinational Enterprises

The OECD Guidelines set out a wide range of corporate standards. In 10 chapters, the documents defines criteria for corporate conduct in the following areas: compliance with national legislation, consumer protection, fighting corruption, establishment of environmental management systems, disclosure of information, compliance with tax legislation. The breadth of this spectrum is an advantage over other instruments. As far as human

rights are concerned, though, the Guidelines tend to be relatively unspecific. While the General Policies call for respect for human rights, they do not spell out what this means specifically.

The scope of the OECD Guidelines goes beyond the OECD countries: On the one hand, nine additional countries⁵⁸ have adopted the Guidelines, on the other hand, the Guidelines also apply to corporate activities in third countries throughout the world. The Guidelines are promoted and monitored via national contact points. This means that the Guidelines provide a decentralised complaint procedure.

The Guidelines are voluntary recommendations by the signatory countries to the corporations in adhering states, and they apply mainly to investment. Thus far, the Guidelines have not addressed the issue of environmental, social, or human rights responsibility in trade relations.

6.6 The UN Norms on Business Enterprises and Human Rights

In 1997 the UN Sub-Commission on the Promotion and Protection of Human Rights prepared a study on transnational corporations and human rights. Subsequently, a working group was set up on methods and activities of transnational corporations; in 1999 it set out to examine relevant conventions and declarations and to work out a proposal on norms for business enterprises.

In 2003 the working group presented its draft for the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights («UN Norms» in what follows). In August 2003 the UN Sub-Commission adopted the Norms by consensus and referred them to the UNCHR for further consideration.

Contents of the UN Norms

- The right to equal opportunity and non-discriminatory treatment;
- The right to security of persons: "Business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture ... forced or compulsory labour ... and other international crimes against the human person as defined by international law.»
- Rights of workers as defined in the relevant conventions of the International Labour Organisation (ILO), including the rights of children to be protected from economic exploitation, the right to a safe and healthy working environment, the right to remuneration that ensures an adequate standard of living, and freedom of association and effective recognition of the right to collective bargaining.
- Respect for national sovereignty and human rights: Business enterprises are obliged to respect economic, social, and cultural rights as well as civil and political rights and to refrain from paying or taking bribes.
- Consumer protection: «...business enterprises shall take all necessary steps to ensure the safety and quality of the goods and services they provide.»
- Environmental protection: «...business enterprises ... in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety, bioethics and the precautionary principle...»

⁵⁸ Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania, and Slovenia (as of 5 May 2006).

The former UN Commission on Human Rights did not endorse the Norms but asked the UN General Secretary to nominate a special rapporteur to the subject. Kofi Annan nominated Prof J. Ruggie who must present his final report in March 2007 to the current UN Council on Human Rights. The Business Leaders Initiative on Human Rights did a road test of the norms with Statoil and implemented them in their politics in Venezuela.

6.7 Forest Law Enforcement and Governance (FLEG)

The World Bank-sponsored FLEG processes started in September 2001 with the adoption of the «Bali Declaration». Participating governments from East Asia committed inter alia to intensify national efforts and strengthen bilateral, regional, and multilateral collaborations to address forest crime and violations of forest law. Despite the creation of a Regional Task Force, and an Advisory Group to the Task Force, there has been no systematic reporting or monitoring of implementation so it is impossible to say, with any degree of certainty, what impact this has actually had on forest crime in the region.

The Declaration remains, however, a useful tool with which to hold governments to account, should civil society choose to do so. In addition, the memoranda of understanding, to combat illegal logging and associated trade, between Indonesia and the United Kingdom, and Indonesia and Japan, have their origins in the East Asia FLEG, as did the EU FLEGT. In addition, meetings at a technical level have taken place in the region.

The East Asia FLEG was followed by an Africa FLEG (AFLEG) in October 2003, and a Europe and North Asia FLEG (ENAFLEG) in November 2005.

Efforts are being made to integrate AFLEG-related objectives and actions into existing initiatives, such as the New Partnership for Africa's Development (NEPAD) framework and other regional bodies such as COMIFAC (Central Africa), SADC (South Africa), Common Market for Eastern and Central Africa (East Africa), and ECOWAS (West Africa).

The European Union has made the most progress; at least on paper. In 2003 the Commission published the EU Forest Law Enforcement Governance and Trade (FLEGT) Action Plan, followed by European Council Regulation (EC No 2173/2005) in December 2005. The regulation deals with the establishment of the FLEGT legality licensing for timber imports into Europe; legality-licensing schemes are at the heart of the proposed EU Voluntary Partnership Agreements (VPAs)⁵⁹ with timber-producing countries. Europe has agreed to start formal VPA negotiations with Indonesia, Malaysia, and Ghana.

For the VPAs to be effective in combating illegal logging, however, they must, for example, include a thorough forest (and related) legal review, strengthen land tenure and access rights of local communities, and ensure meaningful public participation. To date, the European Union has made no guarantee that this will be the case. Similarly, the proposed legality-licensing schemes will have little effect unless they cover all exports and trade within the VPA country. Again, the European Union has made no such commitment. Nevertheless, if NGO advice is taken on board, both the VPAs and the legality-licensing scheme could be very powerful instruments. Other G8 nations and major consuming countries such as China should co-sign these VPAs with timber-producing countries. However, the VPAs will not prevent illegal timber imports from countries that have not signed up, which not only makes it a partial solution at best, but also one that may encourage illegal timber flows from VPA to non-VPA countries, whose exports to Europe will be unaffected. Hence the need for clear legislation to make it illegal to sell illegally sourced timber.

59 For more information on the minimum requirements for VPAs, see: http://www.fern.org/media/documents/document_3760_3761.pdf.

6.8 Reforming Bi- and Multilateral Investment Agreements

IISD Model International Agreement on Investment for Sustainable Development

In what marks the first fundamental effort to review the nature and purpose of international investment agreements (IIAs) since the current model was developed almost 50 years ago, IISD has produced the IISD Model International Agreement on Investment for Sustainable Development. Current investment agreement models, including those represented by the failed OECD's Multilateral Agreement on Investment and over 2,400 existing bilateral investment treaties, offer too narrow a focus as they address only the rights of the foreign investor. And experience has highlighted flaws in a wide range of areas including openness, conflict of interest, and clarity of substantive obligations. IISD's Model Agreement starts from the clear relationship between investment and the achievement of sustainable development. The IISD Model includes the following features:

- It recognises that an investment agreement is fundamentally about good governance, and that protection of investor rights and obligations and host state rights and obligations are an essential part of that equation;
- It applies basic standards of good governance to the international agreement itself, including through an appropriate «conference of the parties» institutional approach;
- It establishes a clear purpose for the agreement: to foster international investment that is supportive of development aspirations for developing countries and sustainable development requirements in both the North and South;
- It develops a clear set of provisions that seek to balance the rights and obligations of investors, host states, and home states;
- It sets out specific proposals to improve the prevalent weaknesses in the investor-state arbitration system, by including greater transparency and an institutional framework;
- It includes an approach to investor obligations that seeks to strike a novel balance between voluntary and binding elements by linking dispute settlement to corporate performance, and investor conduct to investor liability.

→ http://www.iisd.org/investment/model_agreement.asp

ABBREVIATIONS

- **BRIC** Brazil, Russia, India, and China; as Russia is part of the G8, sometimes only BIC is referred to
- **CSR** Corporate Social Responsibility
- **DRC** Democratic Republic of Congo
- **EIR** Extractive Industries Review
- **EITI** Extractive Industry Transparency Initiative
- **ECOSOC** Economic and Social Council of the UN
- **ECOWAS** Economic Community of West African Countries
- **FLEG** Forest Law Enforcement and Governance
- **FSC** Forest Stewardship Council
- **G8** Group of the 8 leading industrial nations: Canada, France, Germany, Great Britain, Italy, Japan, Russia, and the United States
- **ICMM** International Council on Mining and Metals
- **IIA** International Investment Agreements
- **IISD** International Institute for Sustainable Development
- **ILO** International Labour Organisation
- **KP** Kimberley Process
- **MMSD** Mining, Metals and Sustainable Development
- **OECD** Organisation for Economic Co-operation and Development
- **PEFC** Programme for the Endorsement of Forest Certification
- **PWYP** Publish What You Pay
- **UN** United Nations
- **UNAMSIL** United Nations Mission in Sierra Leone
- **WBG** World Bank Group

DRAFTING GROUP

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