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Global Witness Submission to the Department of Culture, Media & Sport for the Inquiry on Press Standards, Privacy and Libel

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Highlighting Threats to Investigating and Publishing in the Public Interest

1. Global Witness would like to take this opportunity to express our serious concerns with respect to the libel and privacy laws in the UK. Given the vital importance of these issues to our core work, we would also like to request the opportunity to make an oral submission to the Committee to expand on these matters.
2. Global Witness is an NGO that exposes the corrupt exploitation of natural resources and international trade systems. We obtain evidence which we use to drive campaigns that end impunity, resource-linked conflict, and human rights and environmental abuses. Global Witness was co-nominated for the 2003 Nobel Peace Prize for its work on conflict diamonds.
3. We are working predominantly in developing countries, emerging markets and in countries with totalitarian regimes and low levels of transparency (according to the Transparency International index).
4. Privacy and libel laws already seriously curb freedom of expression on issues that are in the public interest including political and corporate corruption, the functioning of organised crime and the funding of conflict. They threaten the very existence of many Non-governmental Organisations (NGOs) that engage in the investigation and reporting of such issues.
5. Global Witness feels that the interaction between the operation and effect of UK libel and privacy laws, and investigative reporting by NGOs, must be considered. Libel law in the UK are already strict and impose considerable challenges when publishing reports which we take enormous care to ensure are accurate. These reports often rely on those with first-hand knowledge but who in-country are exposed to the very real fear of reprisals. There are already numerous cases where information that is in the public interest is 'self-censored'.
6. Cases show that the UK legal system is already being used by the rich, powerful and influential to attack publications (aka 'libel tourism'), and the UK system is characterised by disproportionately high costs and damages which may be affordable by media empires, but not by non-profit organisations. Standards for freedom of expression have already fallen below those protected in countries such as the United States. Furthermore, penalties provided for contravention of libel law in the UK are already tougher than in other European countries, as demonstrated by the recent study conducted by Oxford University "*A Comparative Study of Costs in Defamation Proceedings Across Europe*" (December 2008).

7. Global Witness is concerned that the UK libel law already has an unsettling effect on our investigative work which seeks to expose the truth in the public interest. The new trend is for large corporates and wealthy individuals to use the UK libel law to sue and censor the important reporting from NGOs. The impact of even more stringent libel law in the UK will be to silence the truth and endorse the censorship of information. Legitimate inquiry and reporting of 'sensitive' information will be stifled; accountability through methods of 'naming and shaming' will become more difficult. It is because of this position that we feel obligated to respond to the Culture, Media and Sport Committee's call for submissions.
8. Given the dramatic changes in which society now consumes information from the NGO sector, Global Witness believes that it is vital for Parliament to understand that there is a need to make changes to UK libel law that favour the public interest. Serious investigations require openness, transparency and freedom of expression; it is essential that the legitimate inquiry and reporting of sensitive issues, such as corruption and state looting, be possible. The issues we deal with are complex, long-term, and often require in-depth analysis, advocacy and follow-up. The public has a right to know how revenues from natural resources, such as oil and gas, are being misappropriated by the state or shady companies, especially when some of these states are beneficiaries of UK government overseas aid, as highlighted in Case Study 3 below. People who unjustly benefit from the illicit trade in natural resources must be held accountable in the public eye and legal language is needed to reflect this.

Global Witness' concerns relating to repercussions of the libel law in the UK

Global Witness would like to highlight the following specific concerns:

Threat to legitimate inquiry and reporting

9. UK libel law can prevent the publication of NGO reports on governments, corporations and individuals, especially where the information is sensitive and carries a high liability risk.
10. Global Witness often carries out investigations in dangerous places, where local populations either do not have access to information regarding natural resource use, or cannot freely express knowledge of corruption without fear of facing reprisals. However, based on its truth and value of serving the public interest, Global Witness publishes this information. To exemplify the risks described above, in Gabon two anti-corruption activists, two journalists and one civil servant were arrested and charged, on January 7th 2009, for activities related to the dissemination of a document relating to corruption which is freely available on the internet. Four of these people were imprisoned for a week; at the time of writing we understand that they have been released but the charges against all five remain.
11. Global Witness stands by the content of its reports and briefings, and has never been successfully sued. Nonetheless, the increasing cost of defending our work has proven debilitating and prevents us from carrying out more of our core work. Unfortunately, accurate reporting of information does not prevent hostile libel actions from rich business people and Politically Exposed Persons (PEPs), who can paralyse the activities of and financially break an NGO before the action ever gets to court. Where state looting is concerned a 'front person' can be the instrument of the government in trying to pressure an NGO into withdrawing public information. At other times, a very broad brush approach has been used to pressure Global Witness. It is noteworthy that even where we have been awarded court costs in the UK we have not been able to recover them from foreign claimants.
12. The internet often provides the only way information published in the public interest can be made available in certain countries. For example, Global Witness reports are banned in Cambodia, and hard copies have been seized by the police and customs. In one instance, the freelance designer of one of our reports had to flee the country due to threats to his life. In other countries, including Angola, Zimbabwe and Equatorial Guinea, it has not been possible to publish or disseminate hard copies of our reports due to legal and physical threats received from the authorities.

13. However, publishing on the internet means that an organisation or individual is subject to the libel law in any country in which the publication is downloaded. Thus, any information downloadable in the UK exposes the publishers and authors to the possibility of civil action under the UK libel law, even if they are foreign entities reporting on issues with no relevance to the UK and never intend to publish in the UK.

Serious concerns about conditional fee agreements

14. Global Witness is extremely concerned about the conditional fee arrangements (CFAs) that have been proposed as part of changes to the libel law in the UK. We are concerned that the risk of even higher litigation costs, or even just the threat of incurring these costs, will make it more difficult to justify defending claims. Analysis suggests that fees charged by claimants' lawyers will be higher with CFAs because of a lack of monitoring by their clients. Research also supports findings that with CFAs legal fees incurred by the claimant will be higher than those incurred by the defendant.¹ The risk is that we face paying double the claimants' costs, over which we have no control, in the event that the case is lost. This will make it more difficult for us to play an effective role as a 'public watchdog.'
15. Thus Global Witness submits that CFAs create a financial disincentive to us defending a defamation claim. We highlight conclusions reached by Oxford University that CFAs are in contravention of Article 6 (access to justice) and Article 10 (freedom of expression) of the European Court for Human Rights.²
16. Furthermore, we feel that large financial gains should not be the point of libel actions, but rather the focus should be on correcting any erroneous information or issuing an apology (if required). We also feel there should be a time-limit for bringing actions, especially for information posted on the internet.

Public interest and weakened accountability

17. Historically, Global Witness has published sensitive material on powerful public figures to ensure greater knowledge and accountability, even when this has involved us paying high legal costs. In this sense, we have played an important role in providing a voice for disenfranchised people and exposing corruption and illegal activities to ensure accountability around natural resource use.

Case study 1: Oil, Obiang and a DC Bank

18. Global Witness was passed confidential information alleging that multinational oil companies were making payments directly into accounts at Riggs Bank, in Washington DC that were benefiting the dictatorial President of oil-rich Equatorial Guinea. Through subsequent investigations by our organisation, we were able to access public mortgage records showing that President Obiang bought two multi-million dollar mansions in the United States with the financing arranged by a senior manager of the same bank. The resulting press interest helped prompt a US congressional subcommittee investigation into the issue which showed how President Obiang was directly accessing and transferring cash from those accounts.
19. As a result of the investigations and publication of information, the oil companies involved are being investigated for possible violations of the US *Foreign Corrupt Practices Act* (though they have yet to be charged with any offences) and the bank in question has had its federal banking licence revoked for numerous ethics and anti-money laundering violations and was fined US\$24 million for its role in the affair.

Case study 2: Rosukrenergo and Ukrainian gas

20. Global Witness gathered detailed information, from a range of public and non-public sources, on the trade in natural gas that connects Central Asia, Russia, Ukraine and the European Union. We were the first to publish this research and, thus, were able to draw attention to the person who plays a pivotal but hitherto undisclosed role in this trade. A week after publication, it emerged that

¹ See: Study completed by Oxford University, December 2008.

² Ibid: page 5

this individual was in fact a major shareholder in a highly controversial private company which dominates this trade.

21. The company, and the questions about its activities, is central to the current dispute between Russia and Ukraine over the natural gas trade. This dispute, which has recently led to parts of the European Union (EU) facing energy shortages in the middle of winter, has become a top political priority for the EU and our work has shed light, for the benefit of policymakers, the media and other interested parties, on a crucial aspect of it.

Abuse of English courts and UK law through 'libel tourism'

22. Global Witness supports calls to end 'libel tourism' which have been vocalised by others in the NGO community. This practice reflects the willingness of UK courts to allow wealthy foreigners, who do not live here, to attack publications that have no connection with Britain. Also, as discussed in paragraph 13 above, there may be no limits to protect those who publish. This is an assault on freedom of expression.
23. Despite our policy of 'naming and shaming', Global Witness is proud of the fact that in spite of numerous threats, no libel claim has been successfully brought against us. This is due to our own internal procedures that ensure the information we publish is accurate and in the public interest.
24. However, this does not prevent individuals and companies from threatening to file legal actions against us. This is extremely costly - both in financial and resource terms - to an NGO such as ours. The UK courts and UK libel law are increasingly being used to try and prevent publications such as ours from entering the public domain. This is a serious threat which Global Witness faces every time it publishes.

Global Witness' concerns relating to privacy based legal actions

25. Global Witness is very concerned about the precedent that recent cases (e.g. the Max Mosley case) may set in considering the right to privacy over freedom of expression. In response to this, we restate the importance of adequately assessing the true interests at stake, parties involved and severity of the allegations at hand. The balance is at risk of being lost once again. Whilst everyone has the right to privacy, this right should not be taken to the extent that it makes it impossible for NGOs to highlight and expose bad practice, corruption and illegal behaviour: subjects that are in the public interest.

Case study 3: Congo-B, Corruption and the UK Courts

26. Global Witness obtained documents that had entered the public domain through a court in Hong Kong. We published bank and corporate documents showing that Denis Christel Sassou-Nguesso, the son of President of Congo-Brazzaville, had spent hundreds of thousands of dollars on luxury goods and other items using a credit card being paid out of funds appearing to have come from sales of oil by the government. As well as being son of the country's president, Denis Christel Sassou-Nguesso was the Director of Cotrade, the marketing arm of the state oil company and as such was the public official in charge of these oil sales.
27. After publication by Global Witness, Sassou-Nguesso and his company, Long Beach Limited, sought a High Court injunction to force Global Witness to remove his company records and credit card statements from its website. Judge Stanley Burton dismissed this case and found that: "*Once there is good reason to doubt the propriety of the financial affairs of a public official, there is a public interest in those affairs being open to public scrutiny.*" He said the documents "*unless explained, frankly suggest*" that Mr. Sassou-Nguesso and his company were "*unsavoury and corrupt*" and concluded that "*the profits of Cotrade's oil sales should go to the people of the Congo, not to those who rule it or their families.*"
28. Global Witness believed that the publication of these documents was in the public interest and also a matter of international concern as shown by the fact that they were referenced in the US Congress, given that the actions appear to contradict solemn commitments the Congolese

government made to the international community in an effort to benefit from significant debt relief. The UK judge clearly agreed that publication was in the public interest.

29. Regardless of the UK judge's ruling in favour of Global Witness' right to publish this information in that case, and the awarding of costs to us, the practical implication is that we incurred £50,000 in legal costs that have not been recovered as the applicant has not paid them. It is worth noting that these costs accrued over just six working days, between 6th-13th July 2007, the time that elapsed between the original serving of a court order and the end of the Court hearings themselves. Had Global Witness lost the case we would have incurred costs of around £100,000 which, for a non-profit organisation, could be crippling.
30. Furthermore, the applicant's solicitors, Schillings, engaged in behaviour they later conceded in court was inappropriate, including unfounded threats of possible prison sentences for Global Witness' Directors, made via our auditors to whom they tried to serve an Order from a Hong Kong court. The Schillings solicitor concerned, Jenny Campbell Afia, said in her First Witness Statement to the London Court:

*"I explained that the document I wished to serve was an order from a Hong Kong Court and that if the Respondent failed to comply with it, it would potentially be in contempt of court and could have its assets sequestered and/or its directors could be fined or imprisoned (I believed this was true at the time although having now reviewed the Hong Kong Order I note that it does not provide for the Respondent's directors to be fined or imprisoned if the Respondent fails to comply with the terms of the order)."*³

31. Global Witness suggests that these tactics are entirely consistent with a system that seeks to suppress free speech through punitive levels of costs and damages. We do not know whether Schillings always employs such tactics, or whether their threats were indeed the result of a mistake as Jenny Afia claims, but given that Schillings claims on its stationery to be *"The leading law firm protecting the reputations of high profile individuals, corporates and brands"* it seems a very serious mistake to make and was, of course, received as a seriously intimidatory threat.
32. If privacy laws were changed to insist on contacting the individual or company before publication, the negative effects could be horrendous. To exemplify this, we have provided two examples of incidents where had we contacted those named in the reports prior to publication, the outcome could have been very serious:

Case study 4: Taylor, Timber and UN Sanctions

33. Former Liberian president Charles Taylor funded his own regime, personal lifestyle and the brutal wars in Liberia and Sierra Leone with revenues from the diamond and timber industries. In particular he funded Sierra Leone's Revolutionary United Front (RUF), notorious for the mass amputation of limbs of the civilian population, with these revenues. Working with Liberian counterparts who infiltrated the Liberian timber industry Global Witness obtained critical information documenting this industry in detail, the resultant corruption, state looting and the timber for arms trade. This information was published in order to persuade the United Nations Security Council (UNSC) that they should impose sanctions on Liberian timber, which they did in May 2003. Within two months Taylor fled into exile and is now on trial at the Special Court for Sierra Leone in The Hague charged with war crimes. Global Witness' reports have been presented as evidence at the trial. If this information had not been made public the UNSC timber sanctions may not have been imposed at all, or certainly not as soon as they were, which would have prolonged the wars with increased loss of life, forced displacement and general destruction. Had we been forced to contact individuals named in our reports prior to publication we would have jeopardised the lives of our sources and driven the corruption even further underground. We would also have run the risk of an injunction in the UK courts with the intent to slow down and/or prevent publication at a high cost to Global Witness.

³First Witness Statement of Jenny Campbell Afia in the matter of a proposed action in the High Court of Justice, Queens Bench Division; (1) Long Beach Limited (2) Denis Christel Sassou Nguesso, Applicants, and Global Witness Limited, Respondent.

Case study 5: Cambodia, Corruption and Conservation

34. We gathered information on the role of Cambodia's military in widespread illegal logging and extortion in a wildlife sanctuary where international donors (e.g. UN and EC) and international NGOs were spending large sums on ambitious conservation programmes. Through undercover investigations, open field research and aerial surveys, we assembled an extremely detailed picture of which units and which individual commanders were involved, their activities and how much money was changing hands. It was, at the time, the most in-depth investigation Global Witness had ever done on corruption in Cambodia's forest sector and arguably one of the most dangerous for the (Cambodian) Global Witness staff involved.
35. We published this as the 'Taking a Cut' report in November 2004. The same month, at the annual meeting between the Cambodian government and international donors, the latter insisted that the government accept key recommendations from our report (notably on information disclosure) as performance benchmarks for the following year. While the Cambodian government stalled on their implementation, these recommendations set the terms of the debate for natural resource management in Cambodia for the next two to three years.
36. At the time that we published the report, Global Witness had an office and five staff based in Phnom Penh. We felt that if we gave advance notice of our intentions to publish to those named in the report, they would attempt to stop the publication and threaten our staff. We believed that, once the report was published and those named came under public scrutiny, it would be more difficult for them to retaliate. As it was, the Cambodian government banned the report, seized copies and launched an investigation into Global Witness' activities in Cambodia. Eight months after we published the report they banned Global Witness expatriate staff from entering Cambodia and all of our local staff began receiving threats or warnings about their personal security. When the situation did not improve, we decided to close the office.
37. Global Witness believes that ill thought out application of the UK libel and privacy laws could have a seriously negative effect on civil society's ability to investigate and prosecute a large variety of crimes. We hope that the Committee will carefully consider the implications on uncovering the truth and seeking accountability in pursuit of the public interest.

Global Witness appreciates the opportunity to make this submission to the Committee.

14 January 2009