



global witness

Submission by Global Witness to the European Commission

Consultation on the EU response to situation of fragility in developing countries

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Introduction

Global Witness is a non-governmental organisation that works to break the links between the exploitation of natural resources and conflict and corruption (see www.globalwitness.org). We promote improved governance and transparency in the resource management sector to ensure that revenues accruing from resource use are used to promote peaceful and sustainable development.

In post-conflict situations, we work to ensure that crucial investment in the natural resource sector is equitable, sustainable, transparent and free of corruption, and brings long-term benefit to the state and the population, thereby helping to prevent the seeds of future conflict. We also aim to curb current and prevent future conflicts, by denying combatants any income from the trade in natural resources. In 2002 Global Witness was co-nominated for the Nobel Peace Prize for its work on conflict diamonds and in 2005 was awarded the Gleitsman Foundation prize for activism.

Global Witness works on resource-rich countries with a history of poor political and economic governance, including looting of public assets, conflict and instability. In such countries, the economic behaviour of state agents is often predatory, and civil society is correspondingly weak, meaning that often huge revenue streams are not maximised for development. In short, these are countries that are ‘high risk’ in terms of governance, corruption and conflict.

A focus on natural resources in such countries is therefore particularly important when tackling situations of fragility. There is evidence that an abundance of natural resources (as measured by the ratio of primary commodity exports to GDP) is the single most important factor in determining whether a country experiences civil war. The presence of natural resources can also make a sustainable peace less likely because unresolved tensions and rivalries between ex-combatants over control of resource rents can easily pull apart a fragile peace settlement. Equally, transparent and just exploitation of impoverished countries’ natural resources represents one of the few ways by which they can pull themselves up the development ladder.

Please note that we have not attempted to answer questions relating to issues that are

outside our area of expertise. Several of Global Witness' recommendations relate to the need for greater transparency and disclosure of information on revenues from natural resources as a way to address fragility. We see these as first steps towards broader improvements in the management of natural resources. However, in countries where mechanisms to enforce government accountability are weak or non-existent, disclosure of information alone will not be sufficient to tackle corruption. More fundamental changes are required to break the patterns of state looting of natural resources. Central to these is the need to end the impunity which has protected those responsible for these crimes for years, and in some cases decades. Global Witness therefore recommends that in the case of countries with a known record of mismanagement and plundering of state resources, the EU should consider making loans/giving aid conditional not only on the public disclosure of information, but on measurable action by the government to eradicate corruption, including through the criminal prosecution of individuals and companies responsible for these crimes.

What are the “triggers” that identify in practice a situation of fragility, a situation of failure or that such a situation has been positively resolved?

The EU needs to factor the abundance of natural resources and how well-managed and transparent these are in its assessment of fragility. There is evidence that an abundance of natural resources (as measured by the ratio of primary commodity exports to GDP) is the single most important factor in determining whether a country experiences civil war. An analysis of data from 47 civil wars between 1960 and 1999 revealed a major difference in the risk of civil war for resource-poor and resource-rich countries: all other things being equal, countries that did not export any natural resources had a 0.5% chance of experiencing a civil war over this time, whereas countries where natural resource exports made up 26% of GDP had a 23% chance of experiencing civil war.

Natural resources have been particularly closely linked to conflict in West Africa – from cocoa providing 30% of Ivorian government military expenditure between September 2002 and December 2003 and approximately \$30 million a year for the Forces Nouvelles rebel movement since 2004, to diamonds funding the Forces Nouvelles in Côte d'Ivoire, the Revolutionary United Front (RUF) in Sierra Leone and Charles Taylor's war machine in Liberia, and timber providing additional funding to Charles Taylor. These conflicts have spread to neighbouring countries, destabilising the region.

In the Democratic Republic of Congo (DRC), it has been widely recognised that the conflict which began in 1996 has been partly driven by the trade in natural resources. Numerous Congolese and foreign armed groups, as well as the Congolese army and armies of neighbouring countries, fought over mining areas, with catastrophic consequences for the civilian population. The UN Expert Panel reports on the illegal exploitation of natural resources in the DRC concluded that greed over the country's resources played a significant role in prolonging the conflict. The first Panel report stated that the conflict in the DRC “has become mainly about access, control and trade of five key mineral resources....The wealth of the country is appealing and hard to resist in the context of lawlessness and the weakness of the central authority”.

Countries dependent on the natural resource sector are at risk because this sector is

particularly vulnerable to corrupt behaviour and state looting. In developing countries with corrupt governments and weak economies, where advancement in government requires being a member of a particular group and there is little chance to prosper whilst outside of that group, the opportunities offered by a recourse to war are tempting for individuals who want wealth and power and who are unable to get it. In addition, lack of transparency about the flow of revenues from the oil and mining industries to the governments of resource-rich countries in the developing world has made possible the misappropriation of billions of dollars of these revenues by corrupt officials, deepening the poverty of countries such as Nigeria, Angola, Indonesia, Kazakhstan and Equatorial Guinea, and damaging their development prospects.

According to your experience, does “the responsibility to protect” doctrine help guide engagement in situations of fragility?

Global Witness believes that the rise of the international ‘responsibility to protect’ agenda provides for a more prominent and systematic role for the international community, and notably the United Nations Security Council, to address the deliberate targeting of civilian populations in conflicts funded, in part, by natural resource exploitation. The first step towards such a strategy is for the international community to agree on a common definition of “conflict resources”. The definition could be endorsed by a Security Council resolution and could then be used as a trigger for subsequent international action, from preliminary responses such as mandating UN expert panels to investigate the situation, to later responses such as targeted interventions. A common definition could also play an important role in encouraging corporate due diligence by providing a clear behavioural red flag for businesses and individuals operating in conflict zones, or in countries just emerging from conflict. The question remains as to how far the international community is responsible for intervening if a government’s control over natural resources is not benefiting the country or contributing to development.

In which ways have support to democratic governance and institutional development worked to prevent fragility and to address it in its early states?

In post-conflict situations, the EU should always endeavour to strengthen the governance of natural resources. Given that there is a high likelihood of relapse into conflict if the root causes are not addressed, where natural resources have played a role in the conflict, they are likely to play a crucial role in the peace process its success/failure and the post conflict reconstruction of the country. Natural resources can be a peace asset, but for that to be the case, they need to be thought of right from the beginning of the reconstruction process. The EU should ensure accountable and transparent natural resource management in post-conflict reconstruction through various means.

For a start, the EU, as a significant contributor to UN peace-keeping missions, should push for natural resources to be included in missions’ mandates where natural resources have played a role in the conflict.

Particular attention should also be paid when engaging with transitional governments. Too often, these governments are composed in large part of war criminals, human rights violators and people who have looted natural resources, and have no long term

vision for the country. In these circumstances, state looting is likely to occur. In DRC, the transitional government signed many significant mining contracts between 2003 and 2006; a large proportion of the country's mineral wealth was signed off providing great benefits to the companies and to senior politicians and their entourage but few or none to the country as a whole. Little is known about what happened to the money the government received for the contracts signed. Forest concessions were also given out illegally in violation of a government moratorium. Under such conditions of fragility, transitional governments should not be allowed to sign long term contracts/concessions. In Liberia the national transitional government of Liberia also signed numerous long term deals and contracts. Fortunately a review of these contracts has led some to be cancelled and others, like the Mittal steel contract, in part due to pressure from Global Witness, was successfully renegotiated.

In fragile post-conflict countries, the EU should not push to 'kick-start' the economy through the rush to restart the natural resource industries and to the detriment of governance priorities. The short-term gains of the rapid opening up of logging, mining and other extractive industries can be quickly offset by entrenchment of patterns of exploitation that are inequitable and geared towards the profits of individual officials and companies rather than poverty reduction. In countries where embargoes have been applied on specific natural resources, it is essential that that reform of these sectors be considered and undertaken before embargoes are lifted. In Sierra Leone, donors and the government have failed to adequately reform the diamond industry and there is now growing low level conflict in resource-rich areas of Sierra Leone due to the lack of consultation of communities in contract negotiations.

To date, there have been regrettably few cases of international donors intervening effectively to address this source of post-conflict fragility and several in which donor efforts to kick-start export-oriented extractive industries have been counter-productive. A partial exception to this pattern is the timber sector in post-conflict Liberia. Here, some donors did play a constructive role in ensuring that all existing logging concession contracts were annulled, thus ensuring that firms which had been involved in funding or prosecuting the civil war were prevented from continuing their activities. This is a positive example that the EU could seek to emulate in other countries.

In the DRC, in 2007, the commission reviewing mining contracts is under significant pressure from the government and from the private sector to complete its review within an unrealistically short time. This pressure risks sacrificing thoroughness, independence and broad public consultation. The EU could assist with advising and, where appropriate, funding reviews of contracts and reform in accordance with clear terms of reference and principles of transparency and independence.

The EU should spearhead international efforts to address spoliation and state looting by corrupt and unaccountable ruling elites including enhanced support for international initiatives like the Extractive Industries Transparency Initiative. It should also work to make the depredation of state assets for private ends by constitutionally responsible rulers, public officials or private individuals (i.e. 'state looting' or patrimonicide) an international crime.

Within fragile states, civil society is often weak and marginalised by the government. However, in these contexts it remains vital that governments allow free and active participation by local civil society groups in initiatives to monitor the management of revenues from natural resource industries and hold governments to account more broadly. Where civil society activists are regularly threatened or sidelined by governments, as in the DRC and the Republic of Congo, the EU must speak out in their defence.

Central to good governance practices is the upholding of the law. In post-conflict situations and countries of weak governance, the culture of impunity in the natural resource sector often remains a major challenge. In the DRC, for example, the government has persistently failed to uphold the rule of law. Continuing impunity has encouraged individuals and companies, including senior officials in the military and government, to continue looting resources without fear of the consequences. The EU must build upon its work in strengthening the justice system in similarly fragile states. In particular the view that certain individuals and groups within the natural resource sector are above the law must be challenged.

Finally, donors should not prioritise elections and “democratisation” at the cost of almost everything else. In the DRC, donors failed to speak out against crimes related to natural resources throughout the transition, giving members of the transitional government “carte blanche” to continue looting.

How stakeholders from the EU and partner countries (civil society organisations, economic and social partners, decentralised authorities, parliaments) have contributed in practise to address fragility? What do they need to do to maximise their added value?

To avoid furthering fragility, it is vital that significant stakeholders, such as donors and the private sector, assess the political context before intervening in sectors where there is a high risk of corruption. Prior assessment to identify those officials and institutions, whose vested interests may lead them to obstruct meaningful reform of natural resources sectors, is paramount. Unfortunately, in many instances, donors have not done so and actually contributed detrimentally to a situation of fragility. The Forest Concession Management and Control Pilot Project in Cambodia, the subject of a recent damning World Bank Inspection Panel report, exemplifies the risks of failing to take adequate account of such factors. The project lent World Bank endorsement to a rapacious and substantially criminal group of logging companies that were, in some cases, fronts for the families of senior officials. In so doing it altered the balance of power between these firms and forest-dependent communities. The Inspection Panel found that the project had contravened six of the Bank’s own safeguard policies and failed to take on the Bank’s overall goal of reducing poverty.

In the Democratic Republic of Congo, the post-election period presents both significant opportunities and risks. Donors should be playing a critical role in encouraging the newly-elected government to break with the past by embarking on a meaningful programme of reforms to eradicate corruption. Donors should set clear and explicit standards and ensure that these form the framework of their dialogue with the new government. If donors fail to do so, or do so tardily, the new government of the DRC – which includes some of the same individuals who have been plundering

the country's resources during and after the war - will continue using the country's natural resources to line their own pockets to the detriment of the country's development and contribute to enduring fragility.

The private sector also has an important role to play in acting responsibly in countries with weak governance and a high risk of political instability. Global Witness has documented numerous occasions where economic operators, including multinational companies, have adopted practices which fuel human rights violations, create social unrest and breach international guidelines for operating in such conditions. In parallel, countries within which such companies are registered have ultimate responsibility for holding them to account, investigating allegations of illegal practices and breaches of international guidelines, such as the OECD Guidelines for Multinational Enterprises. Unless host and home-state governments start holding companies to account, their activities can continue to act as a destabilising influence and fuel conflict with impunity.

More effective implementation of the Kimberley Process (KP) rough diamond certification scheme could help to strengthen controls over this sector and ensure that diamond revenues go through legitimate channels and contribute to peace and development in situations of fragility and insecurity. Weak regulation over the diamond trade in countries such as Sierra Leone, Liberia, the Democratic Republic of the Congo and Angola has led to diamonds fuelling brutal conflicts, and continues to favour corruption and illicit trade, particularly in the artisanal sector, in spite of the KP. The Kimberley Process needs to play a more proactive role in responding to situations of fragility where diamonds are involved, and the EU and other stakeholders must push for better implementation of existing recommendations on controls in the artisanal mining sector. In many diamond producing countries, Kimberley Process controls are still poorly enforced all along the chain of custody, and there is a need for more attention to be focused on providing technical and financial assistance to increase capacity to implement controls and to ensure that civil society can monitor this process on the ground. The EU should also provide more assistance to participants with respect to gathering production and trade statistics, as they represent a key monitoring tool within the Kimberley Process, and a reporting requirement.

Should fragility be part of the aid allocation criteria, with a view to increasing or stabilising country allocations in situations of fragility?

Global Witness considers that mismanagement of natural resources is a source of fragility and that the transparent and accountable management of natural resources should therefore be made a condition of all non-humanitarian aid. When financially engaging with countries in a situation of fragility, the EU should support greater disclosure of information on public assets by making disbursement of funds conditional on governments disclosing such information to the public. The EU should also consider how it might support civil society efforts to disseminate, analyse and track such information.

In the case of countries with a known record of mismanagement and plundering of state resources, the EU should consider making loans conditional not only on the public disclosure of information, but on measurable action by the government to

eradicate corruption, including through the criminal prosecution of individuals responsible for these crimes.

Which conclusion can be drawn from EU engagement in specific situations of fragility, such as DRC, Liberia, Guinea Bissau, Zimbabwe, Afghanistan, Haiti, the Balkans, and other?

In Sierra Leone, the European Commission (EC) is providing 25 M€, funded from the 9th EDF, to the Government of Sierra Leone for the re-opening of Sierra Rutile Mine. The Government of Sierra Leone, under the leadership of President Ahmed Tejan Kabba signed a mining agreement and entered a joint venture with Sierra Rutile Limited, lending the 25 M€ to Sierra Rutile Ltd. Prior to its closure due to the war, Sierra Rutile was criticised for causing massive environmental degradation and negative social impacts on local communities. Villagers reported to Global Witness in 2007 that there was insufficient compensation, a lack of consultation and no prior consent from the landowners who were adversely affected by the activities of the company. It is crucial in a post-conflict situation that the rights of vulnerable people are sufficiently protected. As the operations restart, there is an opportunity for the company, with pressure from the EC, to ensure the free informed prior consent of the local population should further communities be moved.

In Côte d'Ivoire, the European Union had earmarked funds for the cocoa sector in its 1999 Stabex program. Before financing the sector and at the request of the Ivorian presidency, the EU conducted financial and legal audits of the Ivorian cocoa sector. The EU financial auditors noted a lack of clarity about the total amount of levies collected by the cocoa institutions, as well as their use. The EU legal auditors were concerned by the failure of the cocoa institutions to respect their statutory obligations, as well as by the peculiar legal status of the Bourse du Café et Cacao (BCC) and the Fonds de Régulation et de Contrôle du Café et Cacao (FRC) and their overlapping missions. Based on a preliminary report by the EU financial auditors, several donors, including the EU, the World Bank and the IMF, sent a joint memorandum to the government. The memorandum recommended that the government suspend the Réserve de Prudence and Fonds de Développement et de Promotion des Activités de Producteurs de Café et Cacao (FDPCC) levies, and lower all the other levies. The recommendations were not implemented. On the basis of the audits' findings, the EU decided not to finance the cocoa and coffee sectors in Côte d'Ivoire. Unfortunately, following these two audits, the EU did not follow up with the Ivorian government and did not seem to see implementation of its recommendations as a priority. A healthier and more transparent cocoa sector is nevertheless key to the future recovery and stability of Côte d'Ivoire and it is only by continuing to engage the relevant authorities that meaningful change can be expected to take place.

In the DRC, the EU's proposed programme of assistance on governance includes important components such as the reinforcement of the justice system, improved internal financial controls and promoting the increase of state revenues from natural resources. It is paramount that in a country as large as the DRC, where central state control is minimal in remote areas, the EU works closely with provincial and local level administration, as well as parliament and provincial assemblies.

What should be expected from EU partnerships (global/multilateral,

regional/continental) including in particular the joint EU-Africa Strategy, when it comes to addressing fragility?

It is fundamental that the strategy addresses fragility as a cross cutting issue with specific reference to natural resources. Throughout the 1990s and up to 2005 the UN has consistently recognised the need for the organisation to have a more integrated strategy on conflict prevention, peacekeeping and peacebuilding and has taken some steps. The importance of natural resources has been consistently highlighted yet there is little to show for it in terms of implementation. For instance, natural resources have been left out of the Peacebuilding Commission's brief, despite the fact that they can be a peace asset, but to be so, need to be incorporated from the beginning into thinking the reconstruction process. Natural resources, when they have played a role in a conflict, also need to be integrated in peace agreements and be part of peacekeeping missions' brief. Missions should monitor and help enforce sanctions on specific resources, as well as identify problem areas, even in other economic sectors.

In order to promote peace, security and sustainable development, the joint EU-Africa Strategy should also reflect such need. The strategy should not only address the illicit trade of natural resources, as a governance and human rights issue, as it currently does, but also as a peace and security issue, which in its present form it does not. Given the role that natural resources have played in fuelling several of Africa's most brutal recent conflicts, this is a regrettable omission which needs to be rectified. The strategy should, under the rubric of its peace and security objectives, prioritise definition of conflict resources and the appointment of a group of experts to develop multilateral approaches to this issue.

Thank you for your attention.

Global Witness