

GLOBAL WITNESS U.S. POLICY RECOMMENDATIONS TO COMBAT NATURAL RESOURCE CONFLICT AND CORRUPTION



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Many countries that are rich in natural resources are mired in poverty and poor governance. The revenues generated from these resources are often stolen or squandered through corruption and a lack of government accountability. Without more openness and a much greater say for the citizens of resource-rich countries in how their natural resource wealth is managed, the global scramble for these resources will continue to foster corruption, instability and avoidable human misery. Furthermore, U.S. energy security and national security are undermined by reliance on corrupt and non-transparent regimes which have an increased risk of instability and unrest that can result in disruptions of energy supplies and resource revenues being used to fund groups looking to harm U.S. interests abroad.¹ On the other hand, if natural resources are used wisely, they can be a far more important source of financing than aid or other exports. For example, exports of oil and minerals from Africa in the year 2007 were worth roughly \$260 billion, nearly eight times the value of exported farm products (\$32 billion) and six times the value of international aid (\$43 billion).²

Natural resources such as timber, diamonds and minerals have also played a significant role in financing conflicts by providing money to fund armies and militias who murder, rape and commit other human rights abuses against civilians. In the eastern Democratic Republic of Congo, where the mineral trade has underpinned the war since 1998, rebel groups and the national Congolese army are currently trading illegally in tin ore, gold and coltan. They are using the funds from this trade to perpetuate violent conflict in the region.

PROMOTING NATURAL RESOURCE GOVERNANCE: ACTIONS FOR THE FIRST YEAR

Targeted measures to strengthen natural resource governance must be an integral component of U.S. foreign policy to enhance energy security, prevent conflict, improve investment climates and contribute to the development of poor, resource-rich countries. Several high-impact, low-cost policy measures on natural resource governance and transparency in four key areas offer an opportunity for the new Administration to have a substantial impact in the first year. A widened political space currently exists for these initiatives, sparked by bi-partisan Congressional interest.

¹ Seven of the U.S. top fifteen oil importing countries rank at the bottom third of the world's most corrupt countries, according to data from Transparency International 2008 and Energy Information Administration FY 2008. An increasing amount of U.S. oil imports are coming from Africa – 24% of U.S. oil imports currently come from Africa, according to Energy Information Administration statistics. See Global Witness' report "Oil Revenue Transparency: A Strategic Component of U.S. Energy Security and Anti-Corruption Policy": http://www.globalwitness.org/media_library_detail.php/531/en/oil_revenue_transparency_a_strategic_component_of

² World Trade Organization. "International Trade Statistics 2008 – Merchandise Trade by Product", p. 44. Organization for Economic Cooperation and Development. "African Economic Outlook 2007/2008," p. 665.

SHOW LEADERSHIP ON OIL, GAS, AND MINING TRANSPARENCY

Transparency is crucial to bringing about greater accountability in the management of the oil, gas, and mining sectors and the significant revenues they generate. A multi-faceted approach is required that employs both regulatory and voluntary mechanisms and ensures meaningful civil society engagement to hold governments to account for management of these resources. The progress made by the Kimberley Process to date demonstrates the important role international, multi-stakeholder agreements can play in promoting greater accountability in management of natural resources globally. Some factors that have helped with Kimberley Process implementation offer some lessons: there is a strong incentive for countries to join, the initiative has teeth (countries must implement laws or regulations to comply with KP requirements) and there is a clearly established mechanism to assess whether countries are in compliance, which is done through a peer review involving governments, civil society and industry. It is important to note, however, that the process for dealing with issues of non-compliance has been very slow and less successful due to lack of political will (the current case of Zimbabwe and smuggling of diamonds illustrates this) and the lack of requirement for civil society engagement in the Kimberley Process at the country level.

The new Administration should take the following actions to promote transparency in the oil, gas, and mining sectors:

- *Endorse legislation requiring extractive industry companies to disclose their payments to countries where they operate, on a country-by-country basis, to promote more accountability of how these revenues are managed.* The Extractive Industries Transparency Disclosure Act, which was introduced during the 110th Congress, would apply to 27 of the world's largest 30 oil companies, including major American, Asian and European companies, and its implementation would come at minimal cost to the SEC. This bill is critical for establishing freedom of information and a global standard for transparency in the oil, gas and mining sector. It will promote U.S. interests by combating corruption and improving the stability of U.S. investments abroad through improved governance in oil-producing countries.

Furthermore, the bill would complement and enhance the EITI and move towards mainstreaming the EITI's requirement of company data disclosure. The disclosure of payments by companies would give civil society groups, the driving force behind EITI, greater leverage to pressure governments to join EITI and account for the profits they receive from the extraction of oil, gas, and minerals. Although Global Witness strongly supports the Extractive Industries Transparency Initiative (EITI), the fact is that five years after its creation, some of the countries with the worst records on corruption are not covered by EITI because it is voluntary. For example, Angola, which is not a candidate country, earned over \$67 billion in oil export revenue last year and yet Angola's human development statistics are some of the worst in the world.³

- *Commit to U.S. implementation of the EITI and elevate EITI's priority in the State Department.* The U.S. government, which now serves as an alternate on the EITI Board (after serving on the EITI Board since its inception), should actively support and defend civil society activists working to hold their governments

³ United States Energy Information Administration. "OPEC Oil Export Revenues." Available at http://www.eia.doe.gov/emeu/cabs/OPEC_Revenues/Factsheet.html.

to account over management of extractive industry revenues. This multi-stakeholder initiative has bipartisan support in Congress and Senator Lugar recently called for the U.S. to take these steps based on the findings of a Senate Foreign Relations Committee staff report on the resource curse.⁴ The EITI is at a critical juncture, and U.S. commitment to implement it would send crucial signals to oil-rich countries considering adoption of EITI. U.S. Export Credit Agencies should only finance oil, gas and mining projects where companies disclose revenue payments and the host government commits to EITI implementation and contract transparency.

- *Press all International Financial Institutions (IFIs) to make oil, gas, and mining transparency measures core criteria across all resource-rich countries and oil, gas, and mining projects and to require civil society participation in oversight mechanisms.* The IFIs play a significant role in shaping the development of the oil, gas and mining sector globally. For example, it is estimated that over 100 countries have reformed their mining and hydrocarbon laws over the last two decades under the guidance of the World Bank reform programs. Global Witness and Bank Information Center carried out a survey in 2008 of International Monetary Fund (IMF) and World Bank interventions in 57 resource-rich countries and found that both institutions are neither consistent nor comprehensive in addressing oil, gas, and mining transparency (defined for the survey as revenue and contract transparency). While revenue transparency is frequently a benchmark for the IMF, the World Bank used it far less frequently in both lending programs and country strategies in resource-rich countries. The survey also found for both institutions that contract disclosure is largely not promoted and that civil society engagement is not given sufficient attention. For example, World Bank government and private sector projects are not held accountable for the adequacy of civil society engagement through any benchmarks.⁵
- *Promote fair and transparent practices in the awarding of oil, gas and mineral rights.* Corruption in the awarding of rights to extract oil, gas and minerals is rife in many countries, undermining fair competition between companies and misdirecting the value of a country's natural resource base away from its citizens and into the hands of corrupt ruling elites and unscrupulous companies. Such corruption undermines those countries' prospects for development and prosperity. The U.S. federal indictment against James Giffen, who allegedly channeled \$78 million from Mobil and Texaco to Kazakh officials for oil and gas contracts, is an illustration of this problem.⁶ Competition for access to the world's reserves of oil, gas and minerals may intensify in the longer term and the U.S., as an importer of energy and raw materials, stands to lose out if the basis of that competition is secrecy, bribery and the subversion of the rule of law in foreign countries that supply such resources.

The United States should therefore work to ensure transparency and fair competition in the allocation of oil, gas, and mining rights by governments around the world by: 1) using the voice and vote of the U.S. Government to ensure that multilateral development bodies promote transparent bidding for oil, gas and

⁴ Senate Foreign Relations Committee report prepared by Senator Lugar's staff, "The Petroleum and Poverty Paradox: Assessing U.S. and International Community Efforts to Fight the Resource Curse", November 10, 2008. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_senate_committee_prints&docid=f:44727.pdf

⁵ For more details on the survey, see Bank Information Center and Global Witness report, "Assessment of International Monetary Fund and World Bank Group Extractive Industries Transparency Implementation", October 2008. http://www.globalwitness.org/media_library_detail.php/676/en/assessment_of_international_monetary_fund_and_world_bank_group_extractive_industries_transparency_implementation

⁶ For more information, see Global Witness report "Oil Revenue Transparency: A Strategic Component of U.S. Energy Security and Anti-Corruption Policy", p 10.

mining concessions as an essential component of their programs in resource-rich countries; 2) vigorously applying US law, notably the Foreign Corrupt Practices Act, to all US-regulated companies that seek to win oil, gas or mining rights overseas and 3) ensuring that U.S. bilateral aid and technical assistance to resource-rich countries assists these countries to improve their capacity to allocate oil and mineral rights to companies in an open and fair manner.

- *Promote greater transparency and accountability in the timber sector.* Given the role of timber in financing conflict in some countries (such as Liberia and Cambodia) and its potential to create a resource-curse situation, the U.S. government should actively promote greater transparency and accountability in the management of the forestry sector and the revenues it generates. In addition, forests should be managed in a manner that first and foremost benefits forest dependent people, their home countries, and the environment, which includes addressing forests' contribution to the mitigation of climate change. The U.S. should effectively enforce the recently passed Lacey Act and actively push other countries to adopt similar laws to combat illegal logging. The U.S. should also support meaningful civil society engagement in holding governments to account over management of the forest sector and promote transparent and good governance measures at the national level, including through support for Independent Forest Monitoring (IFM). IFM, which Global Witness pioneered, focuses on cooperation with governments, civil society and the private sector in timber-producing countries by providing objective information on forest concession allocations and infractions, capacity building in forest monitoring techniques and case-tracking for legal processes, in order that the populations of the countries concerned equitably benefit from the sustainable use of their natural resource base.⁷

STRENGTHEN THE ANTI-MONEY LAUNDERING FRAMEWORK

Some of the same factors which caused the current banking and financial crisis – lack of disclosure and lack of globally coordinated regulation – are also those that allow corrupt, criminal, and terrorist funds to enter the United States and the global financial system. This means that financial institutions continue to play a crucial role in facilitating the looting of state funds by corrupt government officials, including funds that derive from the extraction of natural resources. For example, one major U.S. bank, through correspondent banking relationships, enabled Charles Taylor, the ex-president of Liberia now on trial for war crimes, to use the global banking system to earn revenues from timber sales which were funding his war effort as well as being diverted into his personal bank account.

The U.S. has played a leading role in the development of the existing international anti-money laundering framework. However, there are inconsistencies in the application of this framework at a global level that reduce the effectiveness of U.S. laws. For example, the U.S. Senate investigation into Riggs Bank and its

⁷ As an example, Global Witness served as the Independent Observer in Cameroon for several years, where we helped the government identify \$15m worth of claims against illegal loggers for a cost of only \$500,000 to run IFM. While IFM significantly improved forest law enforcement in Cameroon, significant challenges remained in bringing to account those responsible for illegal logging. In some countries IFM is beginning to be institutionalized – for example, in Honduras, IFM has become an accepted part of the timber sector, and is now being run by the state Ombudsman (or Human Rights Commission). For more information see Global Witness report “A Guide to Independent Forest Monitoring” (2005) and other reports on implement of IFM in several countries: <http://www.globalwitness.org/pages/en/ifm.html>, and a recent report on illegal logging in Honduras: <http://www.globalwitness.org/pages/en/hnd.html>

handling of corrupt funds associated with Equatorial Guinea's oil accounts found that suspicious transfers into European banks could not be followed up due to bank secrecy laws in Spain and Luxembourg. These laws do not only impede investigations, they also prevent U.S. banks fulfilling their regulatory duty to perform ongoing due diligence on transactions through high risk accounts when transfers are requested to overseas bank accounts.

Global Witness calls on the U.S. government to advocate for a stronger anti-money laundering framework at the global level to combat the facilitation of corruption by the financial sector over the coming months. The U.S. should push for the following actions to be taken globally:

- Banks must improve their culture of 'due diligence' – the process by which they check the legitimacy of potential clients. Business should only be accepted if an ultimate beneficiary has been identified and does not pose a corruption risk. The U.S. and other countries' anti-money laundering laws should be absolutely explicit that banks must do this due diligence properly, and financial regulators must actively enforce these laws.
- The United States must exercise its influence to push the Financial Action Task Force (FATF) to use its powers to name and shame members whose legal frameworks are insufficient or who are insufficiently enforcing their laws.
- A new set of global rules must be put in place promoting transparency, including new FATF standards that 1) every country must produce full public online registers of the ultimate beneficial ownership of all companies and trusts under its jurisdiction, and 2) banks should be able to respond to requests for customer information from other banks or their own overseas branches (in jurisdictions subject to proper regulation) without falling foul of banking secrecy laws. This would in effect be a globalization of the spirit behind Section 314 of the U.S. Patriot Act.
- Cooperation between governments must improve so that national bank regulations become globally compatible, accountable and transparent, and are not hindered by bank secrecy laws.
- The U.S. should continue to impose a travel ban on foreign government officials and their immediate family members that have been involved in natural resource corruption in their countries.⁸ Global Witness would also like to see this expanded to include seizure of assets; the U.S. should press other countries to adopt similar approaches.

URGENTLY ADDRESS THE ROLE OF NATURAL RESOURCES IN THE EASTERN DRC CONFLICT

The Administration should actively undertake a series of high-level diplomatic and regulatory measures to help break the link between the mineral trade and the continuing violence in eastern Democratic Republic of the Congo. One area for urgent action is addressing the continued role of buyers who are willing to trade, directly or indirectly, with groups committing grave human rights abuses. The U.S. should require companies that are importing products that contain tin ore, coltan, gold, and wolframite extracted in eastern D.R.C. to disclose precisely from which mines these minerals are sourced, when they were extracted, and the identity of their suppliers. The U.S. government should also:

- Ensure that economic agendas of the warring parties are discussed explicitly in mediation efforts.

⁸ An Anti-Kleptocracy Provision to tackle natural resource corruption was included in the FY 08 Foreign Appropriations Bill that passed into law.

- Support efforts to give MONUC the mandate and the means to tackle those aspects of the mineral trade which are benefiting armed groups.
- Back targeted sanctions on traders and companies trading with the armed groups
- Put pressure on governments of D.R.C. and Rwanda to cease support for armed groups, in particular the FDLR and Laurent Nkunda's CNDP, respectively.
- Call on D.R.C.'s neighbors (especially Rwanda, Burundi, Uganda and Tanzania) to halt illicit imports of minerals from eastern D.R.C.

BREAK THE LINK BETWEEN ARMED CONFLICT AND GLOBAL TRADE IN NATURAL RESOURCES

The conflict in the eastern D.R.C. reflects a wider international failure to address the links between armed conflict and the global trade in natural resources. Since the end of the Cold War, rebel movements and terrorist organisations in Africa, Asia and Latin America have sustained their activities through exploitation of natural resources including diamonds, timber, minerals and cocoa. This has triggered, fuelled, and prolonged wars which have threatened international security and cost millions of lives. Global Witness is aware of at least 15 recent cases of natural resource-fuelled conflict, including Angola, Burma, Cambodia, Côte d'Ivoire, Democratic Republic of Congo, Liberia and Sierra Leone. Some academics who have researched this issue cite at least double that number.

Common characteristics of recent natural resource-fuelled conflicts include:

- Prolongation of wars and exacerbation of threats to regional peace and security
- Immense human suffering, often involving human rights abuses amounting to international crimes
- Serious damage to infrastructure, the environment and therefore the prospects for post-conflict stability and economic recovery
- Huge financial cost, for example UN peacekeeping operations in DRC, Liberia, Sierra Leone alone have cost approximately US\$12 billion so far.

Since the 1990s, the UN Security Council has used sanctions targeted at commodities traded in a way which fuels conflict in the cases of Cambodia, Angola, Sierra Leone, Liberia and Côte d'Ivoire. It has set up groups of experts, monitoring the implementation of these sanctions, which have done important work in deepening understanding of the phenomenon. Countries such as the U.S. have also played an important role in establishing the Kimberley Process, an international multi-stakeholder mechanism involving over 70 governments, together with industry and civil society, to halt the trade in conflict diamonds.

While all of these steps have been important, the international community has not yet designed a comprehensive strategy to address the problem effectively. Sanctions have been adopted sparingly rather than systematically, they have taken time to be adopted and have not been implemented effectively. There are also inconsistencies as to which countries and resources are targeted by sanctions.

In June 2007 the UN Security Council held a thematic debate on the issue of natural resources and conflict for the first time. This debate yielded a presidential statement which underscored members' concern and called for more effective action by the UN. Several UNSC members also voiced support for the idea of a UN Secretary-

General's report to examine the issue further. Belgium has recently tabled a proposal for a debate on natural resources, peace and development in the UN General Assembly.

- The new Administration should support the development of a comprehensive international approach to cases of natural resource fuelling armed conflict. The U.S. should lend its weight to efforts to make the UN more effective in dealing with these situations. Global Witness is proposing a series of measures that the new Administration should push for at the UN:
 - Agreement on what constitutes a 'conflict resource', as a trigger for international action
 - Strengthening of existing mechanisms for imposing and implementing sanctions
 - Effective follow-up action to ensure that sanctions violators are prosecuted
 - Mandates for international peacekeeping forces that allow them to secure natural resources in order to prevent conflict and enforce sanctions

The most effective means of generating support for these measures would be for the U.S. and other UN Security Council members to formally call for a UN Secretary General's report on natural resources and conflict. In addition, the US government should put natural resource governance at the heart of its post-conflict 'peace-building' strategies and those of multilateral institutions such as the UN and the World Bank.