



**global witness**

**Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations**

**Committee on Foreign Affairs, U.S. House of Representatives**

**Hearing entitled “Is There an African Resource Curse?”**

**July 18, 2013**

**Testimony of Corinna Gilfillan, Director of U.S. Office, Global Witness**

Good afternoon Chairman Smith, Ranking Member Bass and members of the Subcommittee. Thank you very much for holding this hearing today to focus on the important issue of tackling the resource curse in Africa. My name is Corinna Gilfillan, Director of Global Witness’s Washington, DC office which is an international advocacy organization headquartered in London that investigates and campaigns to break the links between natural resources, corruption and conflict.

Global Witness has carried out pioneering work for nearly 20 years to expose natural resource-related conflict and corruption and associated environmental and human rights abuses and much of this work has focused on Africa. One of our early campaigns exposed how diamonds financed brutal conflicts in Liberia, Sierra Leone and Angola, which brought the problem of blood diamonds to international attention. Our investigations in Africa and globally have revealed how timber, diamonds, minerals, oil and other natural resources incentivize corruption, destabilize governments and fuel conflicts, rather than benefiting a country’s citizens. Through our investigations, research and high-level advocacy we advocate for solutions to the resource curse so that citizens of resource-rich countries can get a fair share of their country’s wealth.

Many countries in Africa and globally that are rich in oil, gas and other minerals are mired in poverty because the public revenues earned from selling these resources are being squandered through corruption and lack of government accountability. In 2010, the value of exports of oil and minerals from Africa was worth \$333 billion, about six times the value of exported agricultural products (\$55 billion) and nearly seven times the value of international aid (\$48 billion).<sup>1</sup> Such resource wealth has the potential to lift many of the world’s poorest out of poverty and bring about significant development opportunities. Yet due to weak governance and corruption, natural resource revenues don’t always reach government accounts and are looted by the very politicians entrusted with developing their country’s economy. In fact, we have seen

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<sup>1</sup> WTO, 2011, ‘International Trade Statistics, Merchandise Trade by product’, OECD 2011, ‘Development at a Glance. ODA to Africa’, p 2.

that resource exploitation entrenches and exacerbates poor governance, lack of accountability and corruption and contributes to stagnating economies while undermining development.

Statistics provide strong evidence that there is a resource curse in Africa. Many of the 20 countries in sub-Saharan Africa identified by the IMF as resource-rich countries<sup>2</sup> languish toward the bottom of the Human Development Index and have some of the world's highest child mortality rates. For example, 12 African resource rich countries have more than 100 child deaths for every 1,000 live births.<sup>3</sup> The 2013 Resource Governance Index by the Revenue Watch Institute evaluates the resource governance of the oil, gas and mining sector of 58 countries globally, and finds that 16 out of 21 African countries surveyed received a "weak" or "failing" score.<sup>4</sup>

Angola and Nigeria are two countries that exhibit the resource curse – they are two of the largest producers of oil in Africa and yet their citizens remain among the poorest in the world, with approximately 70% of Angolans and 80% of Nigerians living on less than two US dollars day.<sup>5</sup> Equatorial Guinea, a highly corrupt country governed by the autocratic President Obiang, generates billions of dollars in oil revenues and has one of the highest per capita incomes in the world. Yet, President Obiang and his family draw on the vast oil revenues to fund their lavish lifestyles while 77% of Equatorial Guineans live below the poverty line and about 20% of children die before the age of five.<sup>6</sup>

The encouraging news is that we are entering a new era of transparency that has the real potential to bring greater accountability in the management of natural resource revenues. The passage of mandatory reporting requirements for extractive industry transparency in the U.S. and Europe and the development of other transparency initiatives are helping to lift the veil of secrecy around the extractives sector. The U.S. government, African governments, civil society and extractive companies have an important role to play in reversing the trend so that natural resource revenues are harnessed for development and poverty alleviation.

### **Natural resources and corruption**

Opacity around the payments oil, gas and mining companies make to governments enables corrupt government officials to siphon off or misappropriate natural resources rather than spend the revenues on development and poverty alleviation. In most cases a country's citizens are the owners of the resources and yet these large and vital revenues flows are often hidden from public

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<sup>2</sup> IMF, "Sub-Saharan Africa – Sustaining Growth amid Global Uncertainty", Regional Economic Outlook, IMF, Washington, DC, accessed July 15, 2013, p. 60. <http://www.africanleadershipnetwork.com/wp-content/uploads/2012/08/Regional-Economic-Outlook.pdf>

<sup>3</sup> Africa Progress Panel Report 2013 "Equity in Extractives," p. 19. <http://www.africaprogresspanel.org>

<sup>4</sup> Algeria, Equatorial Guinea, Cameroon, DRC, Libya, Mozambique, South Sudan and Zimbabwe received a failing grade, Angola, Botswana, Egypt, Gabon, Guinea, Nigeria, Sierra Leone and Tanzania received a weak grade and Ghana, Liberia, Morocco, South Africa and Zambia received a partial score. Countries were evaluated on 4 main categories: Institutional and Legal Setting, Reporting Practices, Enabling Environment and Safeguards and Quality Control. Revenue Watch Institute, 2013 Resource Governance Index, <http://www.revenuewatch.org/rgi>

<sup>5</sup> World Bank: Poverty headcount ratio to US\$2 a day (PPP), available at: <http://data.worldbank.org/indicator/SI.POV.2DAY>

<sup>6</sup> See: <http://data.worldbank.org/country/equatorial-guinea>, Forbes, "The Five Worst Leaders in Africa," February 9, 2012, <http://www.forbes.com/sites/mfonobongnsehe/2012/02/09/the-five-worst-leaders-in-africa/>

view, making them vulnerable to mismanagement or loss through corruption. Revenue transparency is a crucial stepping stone to preventing natural resource revenues from being misappropriated or siphoned off by corrupt regimes and creating an enabling environment for improved resource governance.

The risk of corruption in the extractives sector lies not only in the flow of revenues from contracts and licenses, but also right at the start, when extractive companies are granted access to these license and contracts. Corrupt and badly negotiated oil, gas and mining deals that are done behind closed doors prop up autocratic regimes and enable them to rob citizens of billions of dollars, money that should be used for development rather than enriching elites and the international companies that are willing to do business with them.

The African case studies outlined below illustrate how secrecy across the extractives value chain can fuel corruption or mismanagement of natural resource revenues, undermining efforts for these revenues to contribute in a significant way to development and poverty alleviation.

### **Secrecy around company payments: Nigeria**

Global Witness investigations in Nigeria show the importance of greater transparency around extractive project level payments. In May 2012, Global Witness reported on New York court documents that revealed that Nigerian subsidiaries of Shell and ENI agreed to pay the Nigerian government US\$1,092,040,000 to acquire oil block OPL 245 (a project level payment). Controversially, the court documents also revealed that the Nigerian government agreed, in the same month, to pay precisely the same amount to *Malabu Oil and Gas*, a company widely reported as controlled by Abacha-era Minister, Dan Etete, who was convicted in France in 2007 of money-laundering.<sup>7</sup> This is a compelling example of why we need more transparency on payments - Nigerian citizens should have the right to know what money is being paid to their government as the starting point to demand accountability for where the money ends up.

### **Deals involving hidden companies: DRC**

Secret sales of mining assets in the Democratic Republic of Congo (DRC) shows what can go wrong when natural resource deals are negotiated in a secretive and unaccountable manner. The Africa Progress Panel report estimates that Congo may have lost at least \$1.36 billion from the under-priced sales of cobalt and copper mining assets between 2010 and 2012, in deals involving companies registered in British overseas territories. This is almost twice the country's annual spending on health and education combined.<sup>8</sup> These deals were carried out in secret with

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<sup>7</sup> See Global Witness press release: "Shell's obscure payments kill its case for weak US and EU transparency laws." May 21<sup>st</sup>, 2012, <http://www.globalwitness.org/library/shell%E2%80%99s-obscure-payments-kill-its-case-weak-us-and-eu-transparency-laws>

<sup>8</sup> The Panel's report states that Congo "lost at least \$1.36 billion in revenues from the under-pricing of mining assets that were sold to offshore companies" in five major mining deals. The figure of \$1.36 billion is based on the price at which assets were sold to offshore companies compared to the price at which the offshore companies sold on (or "flipped") those assets to multinationals, or where this data is unavailable against the average of commercial valuations for the assets. The sources of all information are fully referenced in the Panel's report. As set out in footnote 105 of the Panel's report (p. 112), Congo spent \$185 million on health in 2012 and \$513 million on education. Africa Progress Report 2013, "Equity in Extractives," Africa Progress Panel, [www.africaprogresspanel.org](http://www.africaprogresspanel.org),

companies that were based in offshore tax havens and which could therefore keep their ownership secret. DRC is one of the richest countries in natural resources but ranks at the bottom of the UN's Human Development Index and one in five children die before the age of 5.<sup>9</sup>

### **Opacity in bidding processes: Angola and Nigeria**

Global Witness has documented similar problems of opacity around license bidding processes for access to oil rights in African countries. In some cases in Angola and Nigeria, governments appear to have allowed companies special or preferential access to oil licenses raising doubts about the integrity of the process. In certain cases, there are grounds for suspicion that some of the companies may be owned or controlled by government officials or their private-sector proxies. If citizens do not know why particular companies have been awarded natural resource licenses, it leads to suspicions of wrongdoing, especially in countries like Angola, Nigeria and DRC with track records of natural resource-related corruption.<sup>10</sup> Too often private shell companies are awarded lucrative concessions with little information available as to who the beneficial owners of the company are, how much the company has paid for the license and what the country gained in return.

### **Deals that benefit government elites: Guinea**

Guinea provides a particularly stark example of how companies operating in the natural resource sector can sign questionable deals with African elites in order to get access to resources. There are serious corruption allegations relating to the confiscation of half of one of the world's biggest iron ore concessions in Guinea and its granting to a company linked to a billionaire mining entrepreneur. A series of secret contracts seen by Global Witness spell out how a company named the Beny Steinmetz Group Resources (BSGR) promised Mamadie Touré (sometimes known as Mamadie Conté, one of the four wives of then Guinean Dictator Lansana Conté) millions of dollars and shares in the massive Simandou iron ore concession in return for help in acquiring the licences.<sup>11</sup>

Global Witness has raised concerns about BSGR's acquisition of blocks 1 and 2 of Simandou, noting the huge profits that the company made by flipping half their interest on to Vale, the world's largest miner of iron. BSGR paid nothing for its rights to Simandou and sold 51% of its stake to Vale in 2010 for \$2.5 billion. Of this sum, \$500 million was paid out immediately, with the remainder to be paid in stages. Even allowing for the \$160 million that BSGR says it invested in Simandou and a neighboring concession, the profit was immense. The Guinean government's entire annual budget in 2010 amounted to just \$1.2 billion. Given the extreme levels of poverty in Guinea and the international importance of the mining area in question, Global Witness believes full light should be shone on the matter and is urging BSGR to fully address the

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<sup>9</sup> Global Witness: "Rigged? The Scramble for Africa's Oil, Gas and Minerals," January 2012, available at: <http://www.globalwitness.org/rigged/index.html>

<sup>10</sup> Global Witness "Rigged? The Scramble for Africa's Oil, Gas and Minerals", January 2012, p. 3.

<sup>11</sup> "Guinea reignites \$2.5bn mining tussle", 2 November 2012, by Tom Burgis, Helen Thomas and Misha Glenny; [www.ft.com/s/0/06d895f4-24f7-11e2-8924-00144feabdc0.html](http://www.ft.com/s/0/06d895f4-24f7-11e2-8924-00144feabdc0.html)

allegations.<sup>12</sup> The evidence suggests that BSGR may have obtained its rights to one of the world's most important mining assets through bribery.

These case studies show that transparency is crucial not just for the flow of revenues but along the “value chain” of natural resource extraction, from the award of licenses to the allocation of government revenues through national budgets. If citizens are to understand the commitments that their governments have entered into with extractive companies, and to reassure themselves that companies are meeting their contractual obligations, there must be an open-contracting process which involve an open and fair process for the allocation of contracts themselves and disclosure of the contract and the ultimate ownership of companies taking part in bidding. Public disclosure of contracts is a crucial element of transparency to enable citizens to monitor and assess the returns a country is receiving from resource extraction and to help the government build trust and develop deals that are in the long-term interests of the country.

### **A global standard of extractive industry transparency**

Since 2002, Global Witness and the Publish What You Pay coalition, a global coalition of over 650 member organizations including human rights, development, environmental and faith-based groups have advocated for greater transparency of extractive industries to improve the lives of people in resource-rich countries. PWYP has campaigned for governments to adopt mandatory reporting requirements for extractive companies to publish what they pay to governments for natural resource extraction so that civil society can hold governments to account for management of natural resource revenues.<sup>13</sup>

There is now a strong global momentum for lifting the veil of secrecy around payments worth hundreds of billions of dollars that companies make to governments for access to natural resources. The United States government has played a significant leadership role on extractive industry transparency by being the first country to pass a mandatory reporting requirement. Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 is an extractive industry disclosure provision that was championed by a bi-partisan group of Congressional Members.

Section 1504 requires oil, gas and mining companies registered with the U.S. Securities and Exchange Commission (SEC) to disclose in their annual filings what they pay to the U.S. Federal Government and to foreign governments. This provision is supported by a broad group of investors with over \$1 trillion in assets<sup>14</sup> and requires disclosure of payments at the country and project level, including taxes, royalties and license fees. Section 1504 is a groundbreaking provision that will shine a light on billions of dollars in payments to governments from oil, gas and mining companies and decrease opacity in the extractive industries.

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<sup>12</sup> Global Witness press release, “Damning video and contracts show BSGR was lying in Guinea mining scandal”, April 19, 2013, <http://www.globalwitness.org/library/damning-video-and-contracts-show-bsgr-was-lying-guinea-mining-scandal>

<sup>14</sup> See press release by Calvert Investments welcoming release of the SEC's final rules for Section 1504: <http://www.calvert.com/newsArticle.html?article=19806>

Increased transparency in natural resource payments will give citizens in African resource-rich countries information to combat oil, gas and mineral sector corruption and to demand government accountability for responsible resource use. Transparency promotes a more stable operating environment in resource-rich countries, which reduces risks to investors and companies and helps protect U.S. energy and national security interests. Companies are recognizing the importance of being transparent and are already disclosing payments voluntarily, including: Newmont Mining Company (US), Statoil (Norway) and Talisman Energy (Canada).<sup>15</sup>

Global Witness strongly disagrees with the DC District Court's decision on July 4, 2013 to vacate the implementing rules for Section 1504 of the Dodd-Frank Act. Section 1504 remains the law of the land and the SEC will now have to review the most effective way of implementing the law. This decision came after the American Petroleum Institute (API) brought a legal challenge against the SEC's rule for implementation of Section 1504.<sup>16</sup>

The court decision runs starkly at odds to the global trend towards extractive industry transparency. Since the API lawsuit was filed in September 2012 the European Union has ratified the 'Accounting and Transparency Directives', which requires disclosure complementary to Section 1504 across the 28 member states of the EU. The EU policymakers provided no exemptions in the EU law, categorically rejecting industry claims as not credible. Canada has announced it is introducing a similar law, the Swiss government is considering one, and G8 leaders made a strong commitment in June to requiring mandatory disclosure of oil, gas and mining revenue payments.

### **The Africa Progress Report calls for extractive industry transparency**

The Africa Progress Panel, led by Kofi Annan, recently issued a report entitled 'Equity in Extractives' that joins the calls for greater transparency and better governance of the sector stating that "effectively harnessed and well managed, Africa's resource wealth could lift millions out of poverty over the next decade."<sup>17</sup> The report points to a "new culture of openness" in Africa given the growing number of initiatives and laws that are aimed at bringing greater transparency and accountability to the sector. The report recognizes the importance of mandatory disclosure requirements in helping African countries and calls for other countries to adopt mandatory disclosure standards similar to Section 1504 of the Dodd-Frank Act.

The report also recognizes how hidden company ownership is a major barrier to fighting poverty in Africa and calls on the G8 and G20 to adopt common rules requiring full public disclosure of the beneficial ownership of companies and for disclosure of the names of people who own or control companies bidding for natural resource concessions. The G8 recently agreed to a set of principles to tackle the problem of hidden company ownership and the U.S. published a national action plan that commits to create registries of the ultimate owners of companies. Now the U.S. must implement this commitment.

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<sup>15</sup> See PWYP USA Q&A on Section 1504: [http://www.pwypusa.org/sites/default/files/QAs%20on%20Cardin-Lugar%20provision%20in%20Dodd-Frank Section1504 Jan2012 0.pdf](http://www.pwypusa.org/sites/default/files/QAs%20on%20Cardin-Lugar%20provision%20in%20Dodd-Frank%20Section1504%20Jan2012%200.pdf)

<sup>16</sup> Global Witness press release, "History will show DC District Court has drawn wrong conclusions on Dodd-Frank 1504," July 4, 2013, <http://www.globalwitness.org/library/history-will-show-dc-district-court-has-drawn-wrong-conclusions-dodd-frank-1504>

<sup>17</sup> Africa Progress Panel Report 2013 "Equity in Extractives," [www.africaprogresspanel.org](http://www.africaprogresspanel.org)

## **A new standard for the Extractive Industries Transparency Initiative**

Another important initiative is the Extractive Industries Transparency Initiative (EITI), a global multi-stakeholder initiative comprised of governments, civil society and extractive companies, aimed at strengthening governance by improving transparency in the extractive industries sector. Currently, there are 39 countries that are part of the EITI with 21 African countries members, 13 of which are compliant.<sup>18</sup> The aim of the EITI is to provide public reporting on revenue flows so that citizens can hold their governments to account for the management of these revenues. The EITI is a voluntary initiative where countries decide whether they would like to join the EITI and then must meet its minimum requirements. Section 1504 of Dodd-Frank Act complements and reinforces the EITI and will provide extractive payment data from countries that have been unwilling to join the EITI and where it is very challenging for civil society to operate freely, including Angola and Equatorial Guinea.

As a member of the EITI International Board, I was involved in the development of the new EITI standard that substantially expands the scope of data which countries are required to disclose. New disclosure requirements include license holders, license allocations and the activities of state-owned enterprises. The new standard also requires project level reporting consistent with Dodd-Frank and the EU directive. Moreover, the new standard recommends that countries disclose natural resource contracts and the beneficial owners of extractive companies, with a plan to requiring beneficial ownership disclosure by 2016.<sup>19</sup>

It is very encouraging that a growing number of countries in Africa and globally are already disclosing natural resource contracts, including Liberia, Niger, Sierra Leone, Sao Tome & Principe, Guinea, DRC and the Republic of Congo, while Nigeria is considering disclosure as part of its pending petroleum industry legislation.<sup>20</sup> The new EITI standard should be used to promote contract and beneficial ownership disclosure so that it becomes a widely accepted standard in Africa and globally.

Another important development is the U.S. commitment to implement the U.S. EITI as part of the U.S. National Action Plan of the Open Government Partnership. The U.S. government has established a multi-stakeholder group to oversee EITI implementation<sup>21</sup> and plans on submitting an application for membership to the EITI later this year. This is a significant and welcome development for improving governance in the U.S. natural resource sector and showing leadership on the EITI.

The new data from EITI and the Dodd-Frank provision will empower civil society organizations and other stakeholders to pressure governments to improve governance of the natural resource sector. We are seeing that greater transparency is leading to positive outcomes in countries. For

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<sup>18</sup> See: <http://eiti.org/countries>, accessed on July 15, 2013.

<sup>19</sup> See [http://eiti.org/files/English\\_EITI%20STANDARD\\_11July.pdf](http://eiti.org/files/English_EITI%20STANDARD_11July.pdf)

<sup>20</sup> See Global Witness report, *Copper Bottomed? Bolstering the Aynak contract & Afghanistan's first major mining deal*, November 2012, p. 20 <http://www.globalwitness.org/sites/default/files/library/Copper%20Bottomed.pdf>.

See also "Contract Disclosure in the Extractive Industry Transparency Initiative," Position paper by full and alternate civil society members of the EITI International Board, 7 December 2010.

<sup>21</sup> See Department of Interior website on US EITI: <http://www.doi.gov/EITI/index.cfm>

example, Ghana's early EITI reports revealed that mining companies were not contributing adequately to the government for resource extraction. Through civil society pressure and a multi-stakeholder group dialogue, Ghana established a new royalty rate of 5% for gold and increased the corporate income tax from 25 to 35%. Civil society also pushed the government to invest more of its oil revenues in social programs which has resulted in the new revenue management law allowing the government to invest 70% of oil revenues annually in social programs and infrastructure. In Tanzania, a parliamentary review and an active campaign by civil society played a major role in the development of a law that reduces loopholes in the taxation and royalties paid to the government.<sup>22</sup>

### **Resource governance in emerging producing countries**

The global standard of transparency that has emerged presents an enormous opportunity to ensure that new producers in Africa avoid the resource curse so citizens can benefit from natural resource wealth. It is critical that countries with emerging oil, gas and mining sectors in Africa develop robust legal frameworks and transparency in the extractives sector before revenues come on line and corruption risks are high. So far progress is mixed. In Liberia, where there is an emerging oil sector, the government has taken steps to show its commitment to improve transparency through the publication of a full independent audit of examining how it awarded its mining, oil and gas, logging and large-scale agricultural concessions. The audit found major violations in its process for awarding contracts that the Liberian government must urgently address, but the government should be commended for taking an important step to improve resource governance.<sup>23</sup>

In Uganda, where oil is likely to come on line in 2017, donors are providing support and capacity building in the development of Uganda's legal framework and in the negotiation of oil contracts. The Parliament and civil society are also playing an active role in promoting good governance of the sector. The government appears to have succeeded in negotiating more favorable terms in its most recent contracts. However, Uganda's new legislation for the petroleum sector has significant weaknesses and corruption risks, and overall government capacity to deal with social and environmental aspects is poor. In particular the government's commitment to transparency remains low and public sector high level corruption scandals in other sectors are extremely prevalent. It remains to be seen if Uganda can harness its oil for the common good or whether it will be the latest in a long line of states to fall foul of the resource curse.

Uganda is only the first of many countries in the East and Southern Africa region, including Tanzania, Kenya, Mozambique, Malawi, Ethiopia and Somalia, who are either exploring for, or who have discovered significant domestic oil and gas reserves. These new found resources are likely to fundamentally change the economies and governance in this region and the United States' relationship with these states. It remains to be seen whether these countries can capitalize

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<sup>22</sup> See Revenue Watch Institute, "RWI in Partnership Countries," June 2013.

<http://www.revenuewatch.org/sites/default/files/RWlinPartnershipCountries.pdf>

<sup>23</sup> See Global Witness press release, "Liberian government publishes landmark resource audit, but urgently needs to address findings, May 22, 2013, <http://www.globalwitness.org/library/liberian-government-publishes-landmark-resource-audit-urgently-needs-address-findings>

on the new transparency norms which are coming to the fore and put in place adequate regulatory practices to effectively manage their resources and move away from aid dependence.

There are some positive developments in some of these countries as governments, civil society and other actors are attempting to learn the lessons from other countries and avoid the mistakes of the past but the risks in this region in terms of governance, stability, conflict and environmental management are extremely significant. There is now a significant body of evidence and a raft of policy initiatives to support these states as they transition, but absence of political will can create a significant barrier to greater transparency and international donors need to main-stream resource governance as a core part of their assistance.

The challenge for the U.S., and other international donors, is whether they can help replicate the relative successes in countries like Timor Leste and Ghana which have put in place mechanisms to guarantee transparency, civil society engagement and best practice. They will need to ensure that companies operating from their own jurisdictions abide by the highest standards. They will also need to work closely with the governments, parliaments and civil society in resource producing countries to ensure that they manage their resources carefully and transparently from the start. This should include but not be limited to open contracting, adequate consultation and compensation processes, careful environmental management, and sound and transparent revenue management. The U.S. government's Energy Governance and Capacity Initiative led by the State Department is working to improve governance in emerging oil and gas producing countries and should focus on these issues. Another important focus for the U.S. and other donors is to provide adequate support for CSOs and media to help them use new data as it becomes available as a result of mandatory reporting requirements in the U.S. and Europe.

### **Natural resources and conflict**

Natural resources have not only fuelled corruption but also have funded brutal conflicts in Africa. Diamonds and timber played a significant role in funding Liberia's bloody conflict that ended in 2003 and killed over a quarter of a million people and displaced a further 1.3 million. Now Liberia faces the challenge of managing its resources in a way that will contribute to development and prosperity instead of conflict. Natural resources continue to fuel conflicts and human rights abuses in Africa as outlined in the following case studies.

### **Diamonds funding human rights abuses: Zimbabwe**

In Zimbabwe the discovery of large diamond fields in the mid-2000s has done little to help the Zimbabwean people, 72% of whom live below the poverty line.<sup>24</sup> Instead the ruling ZANU-PF elite is using Zimbabwe's diamond wealth as a source of off-budget financing for partisan security forces with a track record of committing human rights violations against Zimbabwe's civilian population. This is of particular concern in the current political context, as levels of intimidation by police, military and secret police have been building in Zimbabwe as we move closer to elections at the end of this month.

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<sup>24</sup> See data from the World Bank: <http://data.worldbank.org/country/zimbabwe>

According to Kimberley Process statistics, Zimbabwe is now the world's fourth largest producer of diamonds by volume,<sup>25</sup> which gives the country the potential to be earning billions of dollars from their sales. However, finance minister Tendai Biti has repeatedly complained that diamond money is not making its way into government coffers<sup>26</sup> and earlier this year declared that Zimbabwe was broke.<sup>27</sup> Global Witness research has shown that some of the joint venture companies operating in Zimbabwe's main diamond producing area, Marange have complex ownership structures which may be being used to conceal the true beneficial owners of the companies. In the case of one joint venture company, Anjin, Global Witness found evidence that the state owned mining company ZMDC had used a front company, Matt Bronze, to incorporate the joint venture with Chinese construction firm, Annu Foreign Investments. GW's investigation revealed a senior military official to be one of the owners of Matt Bronze.<sup>28</sup> Military ownership of Anjin has since been verified by Zimbabwe's deputy minister of mines Gift Chimanimire.<sup>29</sup>

It is of great concern that Anjin, a company with huge potential for revenue generation, is funding a partisan and abusive military force instead of remitting to Zimbabwe's treasury. Diamond revenues in Zimbabwe have the potential to inject desperately needed funding for development and aid the country's transition to a more stable and democratic future, but instead are being used to undermine that very same prospect.

### **The Kimberley Process's failure to achieve its goals**

Global Witness first exposed the problem of blood diamonds in 1998 and played a key role in establishing the KP. The KP is a government-led rough diamond certification scheme launched in 2003, which requires member states to pass national legislation and set up an import/export control system for diamonds. Eighty of the world's diamond producing, trading and manufacturing countries participate in the scheme. Global Witness was an official Observer in the Kimberley Process from 2003 until we withdrew from the scheme in 2011.<sup>30</sup>

Although the establishment of the KP led to some welcome shifts - for example certain diamond producing countries like Sierra Leone saw an increase in official revenue from diamond exports - the KP's refusal to evolve and address the clear links between diamonds, violence and tyranny rendered it increasingly outdated. Intensive efforts over many years by a coalition of NGOs were unsuccessful in closing the scheme's loopholes and many of the governments involved show no interest in reform.

Despite claims to the contrary, the KP and member governments have been largely unwilling to take meaningful action to stop diamond-fuelled violence and corruption in Zimbabwe's controversial Marange area. Weak industry self-regulation all along the diamond pipeline means

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<sup>25</sup> [https://kimberleyprocessstatistics.org/static/pdfs/public\\_statistics/2012/2012Charts.pdf](https://kimberleyprocessstatistics.org/static/pdfs/public_statistics/2012/2012Charts.pdf)

<sup>26</sup> "Biti: Zimbabwe too broke to hold referendum elections" Voice of America, 21 Dec 2012 and "Zim finance minister demands "Zanu-PF diamond money for elections" Zimbabweelection.com 10 July 2013

<sup>27</sup> "Zimbabwean government bank balance 'down to \$217' The Guardian 30 January 2013

<sup>28</sup> "Financing a Parallel Government" Global Witness, July 2012, <http://www.globalwitness.org/library/financing-parallel-government-Zimbabwe>

<sup>29</sup> "Chimanimire defends army's presence at Chiadzwa" The Herald 18 June 2012

<sup>30</sup> "Why we are leaving the Kimberley Process," by Global Witness Founding Director Charmian Gooch, December 5, 2011, <http://www.globalwitness.org/library/why-we-are-leaving-kimberley-process-message-global-witness-founding-director-charmian-gooch>

that diamonds from Marange find their way onto global markets, and most consumers don't know whether the diamonds they buy have benefited armed violence or abusive regimes.

Companies buying or trading rough and polished diamonds should take steps – known as due diligence – to find out whether their purchases have funded conflict or human rights abuses at any point in the supply chain. Global Witness is part of an informal multi-stakeholder working group, including companies, governments and civil society organizations that have come together to address concerns about responsible sourcing in the diamond and precious stones sectors.

### **Minerals fuelling conflict: eastern DRC**

For the last fifteen years, armed groups and members of the national army have used profits from the trade in tin, tantalum, tungsten and gold to finance themselves and their operations in eastern Democratic Republic of Congo (DRC), fuelling a war that has cost over 5.4 million lives. The country's natural resource wealth is not the root cause of the violence, but competition over the lucrative minerals trade in its eastern Kivu provinces has become an incentive for all warring parties to continue fighting. The metals mined in eastern DRC enter global markets and make their way into products such as mobile phones, cars, airplanes and jewelry. Meanwhile the population in Congo's east bear the brunt of a conflict characterized by murder, pillage, mass rape and displacement.

The U.S. has played a leadership role in tackling this issue through the passage of Section 1502 of the Dodd-Frank Act, the conflict minerals provision. The conflict minerals provision, which was championed by a bi-partisan group of Congressional Members, aims to break the links between DRC's minerals trade and abusive armed groups and requires companies registered with the SEC to carry out due diligence on their supply chains to determine whether their purchases have funded conflict and/or human rights abuses.<sup>31</sup>

Section 1502 has brought unprecedented attention to the Great Lakes Region and has catalyzed reform of DRC's mining sector to combat conflict minerals and spurred the development of a regional mineral certification scheme. It has spawned the development of industry initiatives to clean up supply chains while gradually creating opportunities for transparent and conflict-free sourcing.

U.S. leadership has also spurred Europe to begin taking action to combat conflict minerals. The European Commission has recently carried out a formal consultation to obtain feedback from stakeholders on developing a European policy to break the links between minerals and conflict in eastern Congo and globally. The OECD's international standard for carrying out supply chain due diligence in conflict zones is an important global standard which companies will use to comply with Section 1502. The standard was developed to be used anywhere in the world where minerals are fuelling conflict or human rights abuses, an approach that the U.S. government should widely promote.

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<sup>31</sup> See Global Witness website for more information on Section 1502 of Dodd-Frank: <http://www.globalwitness.org/library/dodd-frank-acts-section-1502-conflict-minerals>

## **U.S. leadership to tackle the resource curse**

The U.S. government has a major role to play in combating the resource curse in Africa. Better governance of natural resources will contribute to stability and economic development in African countries, help protect U.S. national and energy security interests and promote a more stable operating environment for American companies. Therefore, the U.S. government should prioritize the following issues to improve natural resource governance in Africa:

**1). *Effectively implement Section 1502 of the Dodd-Frank Act to combat conflict minerals and Section 1504 of the Dodd-Frank Act to increase transparency in the extractive industries.*** U.S. government leadership on this issue has catalyzed global action that will lead to better governance of natural resources in Africa. The U.S. must stay committed to implementation and allow no exemptions while actively supporting civil society in using the data from Section 1504 to hold governments to account for management of natural resources. Building on G8 Commitments and action in Europe, the U.S. should continue to push other countries to adopt similar provisions.

**2). *Make the transparent and responsible management of natural resources an integral part of U.S. foreign policy objectives.*** Specifically, the State Department should proactively work to improve natural resource governance in African countries by promoting open-contracting and transparency across the value chain, including with revenues, license allocations, contracts, and beneficial ownership. Efforts should focus on increasing the capacity of African governments to negotiate better natural resource deals and improving governance of state-owned companies and natural resource funds. The U.S. should mainstream resource governance as a core part of its assistance to resource-rich countries and require that the US assistance through such programs as the Energy Governance and Capacity Initiative be explicitly linked to transparency commitments and progress made in achieving them. The U.S. should integrate natural resource governance requirements into its lending through U.S. export credit agencies and through reauthorization of the Africa Growth and Opportunity Act (AGOA). The U.S. must also effectively implement the U.S. EITI to lead by example and improve U.S. natural resource governance.

**3). *Tackle hidden company ownership in the U.S. to prevent American companies from being misused to move corrupt and other dirty money into the U.S. financial system.*** Building on the G8 commitments to tackle hidden company ownership, and the U.S. Open Government Partnership commitment to advocate for legislation that would require meaningful disclosure of beneficial ownership information, Congress must pass legislation to require all U.S. companies to disclose their beneficial owners (which is the natural person(s) who maintain(s) an economic interest in or control over the company at the time it is created) to end the secrecy around anonymous shell companies that can facilitate corruption and state looting.

**4). *Protect human rights and support civil society in holding governments to account for governance of the natural resources sector.*** In some countries, particularly countries with autocratic regimes and weak rule of law, civil society experiences serious challenges in its ability to operate freely and speak out against corruption and mismanagement of natural resources. The State Department must develop a proactive strategy for supporting and building civil society's capacity on these issues and help address the grave risks that civil society faces in some countries in Africa and globally.

**5). Rigorously enforce the Foreign Corrupt Practices Act to prosecute individuals and companies that make corrupt payments to foreign officials and to combat financial fraud.** The FCPA makes it illegal for U.S. companies to pay bribes to foreign government officials and is an important law to hold companies to account for corrupt behavior in the extractives sector.