Written evidence submitted by Global Witness

About Global Witness

1. Global Witness is a London-based campaign group established in 1993 that investigates and campaigns on corruption, conflict and environmental abuses linked to the trade in natural resources. Global Witness conceived and co-launched the Publish What You Pay campaign in June 2002, which led to the establishment of the Extractive Industries Transparency Initiative later that year. Global Witness’s earlier work on conflict diamonds, for which we were co-nominees for the Nobel Peace Prize, also led directly to the establishment of the Kimberley Process on blood diamonds in 2000. More recently, Global Witness has been at the forefront of campaigns in the EU and the US for strong laws to stem conflict-financing and to promote transparency in the mining and oil sectors. In 2014, we were awarded the TED Prize for our work on hidden company ownership and the Skoll Prize for Social Entrepreneurship.

Summary

2. Natural resource-linked conflict, corruption, and environmental degradation seriously undermine development. The UK’s future approach to development should prioritise the sustainable and responsible governance of natural resources as an integral part of its broader development strategy, with an accompanying coherent approach which aligns all relevant HMG departments. Such an approach should recognise the UK’s direct role in poor resource governance – as a major resource consumer market and destination point for corrupt funds and individuals.

3. In many of the world’s poorest countries, the value of natural resources far outweigh foreign aid received. But these resources are all too often looted by corrupt government officials, armed groups or predatory companies, while aid serves as a crutch to prop up essential public services.

4. Global Witness has seen time and time again how millions of dollars in aid and years of work by dedicated officials can be instantly undermined by a backroom handshake or the flick of a pen on an ill-gotten contract. In countries such as the Democratic Republic of Congo and the Central African Republic, the trade in minerals and precious stones is motivating and funding violent conflicts that undermine peace and development. In countries such as Zimbabwe and Cambodia, natural resources that should be funding development are instead entrenching the power of corrupt political elites and undermining democracy.

5. Recently, Kofi Annan’s Africa Progress Panel has shown why this matters. The Panel documented a string of secret deals in Congo’s mining sector, where mining rights were bought at knockdown prices by offshore companies and then “flipped” to major international firms for a vast profit. It estimates the Congolese government lost out on at least $1.36 billion in five such deals 2010 and 2012 – equivalent to almost double the country’s annual spending on health and education combined.¹

6. Despite the high stakes involved, Global Witness’ experience on the ground suggests that frequently donors have no co-ordinated response. Often, little is said and the aid money keeps flowing. Donor governments, including the UK, have not spoken out on the Congo case above for example. Much more can and should be done on this front. But the role of the UK government overseas in promoting responsible natural resource governance overseas does not stop at aid. For example, the EU is a major trading hub for potential conflict minerals, and the UK is a major trader in products that might contain such minerals, including consumer electronics. Likewise, Britain is a haven for dirty money and the people it belongs to. Many of the world’s most corrupt people are free to park the money they have stolen in London’s high-end property and respected banks. They use our lawyers to set up shell companies to hide what they are doing, and send their children to our private schools. They lead extravagant double-lives in one of the world’s great cities while the citizens they have stolen from continue to live in dire poverty back home. The cumulative impact damages UK interests by undermining our aid efforts and stoking instability in strategically important places like
Afghanistan, Iraq, Syria and Ukraine. Concentrating solely on development assistance will not address the underlying structural causes of poverty and conflict: instead, a coherent, cross-Whitehall approach which captures HMG aid, defence, trade, immigration and foreign policy is needed.

7. The IDC has already identified corruption and governance as critical missing parts of the UN’s Millennium Development Goals. The purpose of this submission is to provide practical policy recommendations for making the UK’s approach to development more effective at dealing with these issues broadly and as they relate to natural resource governance. It is not a comprehensive list, nor a set of cookie-cutter rules for development policy. Rather, it is intended to start a conversation about what is and is not working, and what should be done about it.
8. Pending appointment of a new anti-corruption Champion, HMG is due to publish its first national anti-corruption plan in the final quarter of 2014. To implement the plan and enhance cross-government anti-corruption co-ordination it’s also established a new international anti-corruption unit in the Cabinet Office. Both these moves represent a significant step forward in the UK’s approach to development and offer the hope of a cross-Whitehall coordinated approach to corruption.

9. The anti-corruption plan is still to be published, but it is nonetheless clear the UK still has considerable work to do to address loopholes in the system which fuel overseas corruption. Some of the statistics are damning: according to a Financial Services Authority review from 2011, 75 per cent of UK banks failed to do the right legal checks on their customers to make sure the source of funds was legitimate. And the UK has yet to prosecute a company under the 2010 Bribery Act for failing to prevent corruption.

10. Behind these statistics lie an unpalatable reality and reputation risk for UK: it’s still far too easy for corrupt officials to hide their money in our banks and property market, for example. And this is despite repeated exposés demonstrating how our banks are doing business with corrupt individuals. In a recent case, Global Witness showed how Natwest, Royal Bank of Scotland, UBS and HSBC had banked millions that had been paid in bribes to corrupt Nigerian state governors. One of those governors sunk some of his corrupt profits into four properties in London. This is not a side effect of the corruption - the fact the money is stashed here is what helps it to happen in the first place.

11. There is also more to do around the concept of ‘denial of entry’ to deny safe haven to corrupt individuals. Our experience shows that the corrupt enjoy the proceeds of crime once they’ve crossed borders, through purchasing luxury goods and real estate. The US leads the field here with their ‘Kleptocracy Initiative’ to deny safe haven and the recent Magnitsky Act which places smart sanctions on those responsible for the death of Russian lawyer Sergei Magnitsky. A new law is also currently in the Senate to apply the ‘smart sanction’ provisions in the Magnitsky Act globally against corrupt officials and human rights abusers. The G20 has recently agreed a progressive commitment to deny safe haven to corrupt individuals but, according to the G20-B20 Dialogue Efficiency Task Force, the level of compliance with this commitment on denial of entry is the lowest among all made by the G20.

12. The ongoing review of the institutional arrangements for prosecuting corruption announced by the Rt Hon Ken Clarke in June is welcome in many respects. That said, any suggestion of abolishing the Serious Fraud Office should be approached with extreme caution. In our view, the most effective strategy for tackling large-scale corporate bribery would be to invest properly in an institution that has unique characteristics and expertise, and give it unambiguous political backing.

13. HMG’s new anti-corruption drive should prioritise the following key areas:

   - proper enforcement of existing anti-corruption legislation and enough resources for those on the front-line of implementing it;
   - Adhering to G20 commitments to deny corrupt foreign officials the right to visit or live in the UK and spend their country’s stolen wealth. As a first step, the UK should review current compliance with these systems and identify where they are and are not being implemented. Particular attention is needed on due diligence around the current ‘investor visa’ regime;
   - Tackling the professional enablers ‘service economy’ of corruption in the UK: the estate agents, lawyers and companies who help launder the money and reputation of their clients. As a first step, the UK should review current enforcement of AML due diligence requirements for these professions and set out an action plan for how to strengthen their front-line anti-corruption defences and professional integrity mechanisms.
Enhance corporate transparency

Mandatory disclosure of foreign extractives payments

14. Global Witness applauds the Government for taking a strong global leadership role in the field of extractive industries payment transparency. We encourage the Government to continue promoting the introduction of common, mandatory reporting standards internationally, in particular with state and regulatory agencies in the USA and Canada where comparable rules are currently under development. We also commend the Government for swiftly producing draft regulations to implement the EU Accounting Directive. However, we believe the UK regulation clauses that empower the Business Secretary to veto criminal prosecutions for non-compliance are unnecessary, are unsupported by the Directive or by the Companies Act, and significantly weaken the regulation. We urge the Government to remove these clauses and utilise existing safeguards against frivolous or vexatious cases.

15. The ‘OPL 245’ case demonstrates why a common, global standard for project-level reporting is urgently needed. In May 2012, Global Witness exposed how the Nigerian subsidiaries of Royal Dutch Shell and Italian oil company Eni agreed to pay US$1.092 billion for one of Nigeria’s most lucrative oil blocks, OPL 245. The payment was made by Shell and Eni to the Nigerian government who had a separate agreement to pay the same amount to Malabu Oil and Gas, a company widely believed at the time of the payments to be controlled by convicted money-launderer and former oil minister Chief Dan Etete. In July 2013, a British High Court ruled that Etete was indeed the owner of Malabu Oil & Gas. As Etete had awarded the oil block to Malabu Oil and Gas whilst oil minister for the General Abacha administration, he had effectively given himself one of the most lucrative oil blocks in Nigeria. Losses to the state may be over $1 billion – funds which could have paid to train almost 400,000 midwives in a country where 142 women die from childbirth every day. The deal is being investigated by enforcement agencies in the UK, Italy and Nigeria and is now threatened with cancellation after a recommendation by the Nigerian House of Representatives. A deal like this would have been more difficult to strike if payments made by Shell and ENI to the Nigerian government at a project level were public.

Public beneficial ownership information

16. Global Witness welcomes the legislation (as part of the Small Business, Enterprise and Employment Bill) to create a public register of the beneficial owners of companies. This legislation will be the first in the world, and a big step forward in preventing people hiding criminal activities behind shell companies. There have been two cost/benefit analyses carried out looking at the costs of creating a beneficial ownership registry: one done by the UK in 2002 and one done by the European Commission in 2007. Both concluded that public registries of beneficial ownership would be more cost effective than the status quo. The move is also strongly supported by the public; in polling only 9% of the British public believe that company ownership should be allowed to be secret. To ensure the legislation is as effective as possible, there are some key areas of the Bill that need to be strengthened:

- Verification – ensuring the data is as accurate as possible;
- Updating – ensuring the data is kept up to date;
- Sanctions – ensuring that the sanctions for not complying are serious and meaningful enough to encourage compliance;
- Exemptions – ensuring that exemptions are allowed only in exceptional circumstances.

Use smart aid to tackle corruption overseas

17. The UK is a major aid donor and holds significant political influence overseas. We are rightly concerned and focused on making sure money doesn't get misappropriated from our aid programmes, but we are less good at ensuring our development programming and political voice are used effectively to send a strong anti-
corruption message. To put it another way, the money stolen from aid programmes is a relatively small
when compared to the estimated $1 trillion lost each year in illicit financial flows from developing countries.viii
When viewed through this lens, the need for wider anti-corruption measures is clear.

18. The UK should coordinate with other donors in tackling corruption, engaging in fragile contexts, and ensuring
natural resources are managed sustainably and in a way that benefits local communities. One of the biggest
problems in current donor support for natural resource governance is that analysis of the context is either
inadequate or ignored. With high staff turnover – particularly in the most challenging countries – it is all the
more important that programmes are properly informed by political economy and corruption analyses,
including an in-depth review of past and current corruption cases and governance risks. Joint donor
assessments are a good way to make this happen because they lay the groundwork for future coordination
and collective action on corruption issues.

19. UK aid should promote effect natural resource anti-corruption mechanisms. Setting benchmarks for progress
on transparency and governance is an important way for aid donors and recipients to focus reforms,
coordinate efforts, and maintain momentum for improved governance. However, these benchmarks are
meaningless if the parties involved are unwilling to act when they go unmet. All too often, donors make poor
excuses for why progress has not happened. Our work in Cambodia provides an historic insight into this
phenomenon. See Appendix 1: How to give money and still not influence people. These excuses allow
government officials to delay reforms and donors to provide even more assistance while governance
systems remain weak and unaccountable, and corruption persists. Instead, donors and recipients should
agree clear milestones and timeframes for action against corruption, tied to the provision of further aid.

20. The Extractive Industries Transparency Initiative (EITI) can be a powerful tool for improving natural resource
governance, and aid donors are right to include it in their anti-corruption strategies in some resource-rich
countries. However, an exclusive focus on revenue transparency can miss other earlier crucial anti-
corruption measures and the EITI should not be a substitute for these. Rather than pointing straight to the
EITI as the only resource governance target, donors should evaluate corruption risks across the whole ‘value-
chain’ of resource production and sequence their interventions accordingly. There may be more immediate
and effective standalone governance targets worth pursuing first, for example the immediate publication of
all oil contracts in Uganda or of oil company ownership information in Myanmar. Similarly, contract
transparency is important, but not a cure-all for corruption. While valuable, the publication of contracts can
be used to justify an opaque and flawed process. The Open Contracting Partnership offers guidance on best
practice here. Likewise, for information to be usable and useful it needs to be published in a way which
complies with guidelines set out in the G8’s Open Data Charter.x

21. Transparency is important but focusing only on information being publicly available misses the big picture of
corruption and promoting accountability. The key is using that information to hold the government
accountable for the management of natural resources. Ultimately, aid recipient governments should be
accountable to their own institutions and citizens, not to foreign donors. Donor support should therefore
focus on building up the domestic oversight actors needed to ensure natural resources are managed in the
best interest of the population and engaging in the kind of mass public outreach and education efforts to
combat corruption.x These actors include parliaments, national audit institutions, and civil society. Such
technical assistance must be complemented by political support aimed at protecting the independence and
of the creation/maintenance of a space for civil society to operate in.

22. More effective corruption response efforts are key. In 2006, the Organisation for Economic Co-operation and
Development (OECD) acknowledged the need to develop collective donor responses to corruption and has
since developed 5 core components for such efforts. These components include:

- having better data and analysis at the start and throughout (see recommendation 9);
- linking domestic and international anti-corruption efforts (see recommendation 10);
- talking strategically with the recipient government about governance concerns, possibly including a
  rolling script for diplomatic pressure;
• using a graduated response to corruption cases, to translate tough words into tough action as needed; and

• coordinating technical reforms.

23. But implementation of this informal guidance has been slow. A recent analysis by the U4 Anti-Corruption Research Centre found that the biggest shortcomings in donor responses to date were a failure to collectively prepare in advance, act consistently and predictably, and maintain a multi-level dialogue. As a start, the UK should review the extent to which it is following and implementing these guidelines. In addition, it should initiate an international working group of donors to develop clearly defined and agreed approaches to prevent and respond to corruption. One forum for doing this could be the 'Global Partnership for Effective Development Cooperation'. Another could be via the G20 development working group.

Military reform, Anti-Corruption and links to governance

24. The UK should address the disconnect between development/governance efforts and security goals and challenges. There is a disconnect between issues considered part of the security realm, and thus the purview of the Ministry of Defense or Foreign Office, and development, governance issues, and corruption under agencies like DFID. Numerous cases, backed up by hard-nosed academic studies, demonstrate that the two sets of issues are intimately intertwined, and one set cannot be solved without the other.

25. For too long, Western security assistance has neglected to address corruption and governance as a security concern. A 2014 report by the Carnegie Endowment for International Peace, for instance, has noted that, since 2008, there have been major corruption related security incidents in fifty-one countries, including sudden regime change, serious violence due to corrupt alliances with trafficking networks, electoral violence, insurgencies, and coup d’états. Indeed, there is a high correlation between those countries considered the most unstable in the Fragile States Index with Transparency International’s Corruption Perceptions Index and the World Bank’s Governance Indicators.

26. Lack of governance and development mean that the costs of illicit armed actors to acquire weapons and soldiers is low, while smuggling networks and other illicit activity can easily resource criminal or insurgent groups, such as the role rubies play in Myanmar, coltan in the Democratic Republic of Congo, and opium, emeralds and marble in Afghanistan. They also lead to corrupt, low capacity militaries where military and aid budgets are diverted for personal use, promotions are politicized, and security forces are predatory on their populations; these militaries are hardly viable partners for the UK, nor does it forward the UK’s goals of building democratic governments with sustainable economies.

27. Thus, security sector reform must be considered an important element of the future for UK development. Security forces certainly need capacity building assistance, but if that security force was predatory and corrupt before, additional training will only make them more capable at predation and corruption if it is absent vetting, civilian oversight, accountability, and the inculcation of a military ethos.

28. As the understanding of the role security forces often play in licit and illicit business grows, ensuring security forces focus on providing a secure enough environment for economic development, rather than trying to grab the rents of foreign aid, are a key aspect of sustainable economic development. While focusing more on governance versus quantitative outputs will be difficult for the UK’s security sector reform institutions initially, the payoff comes from a decrease in the number and severity of fragile states and fewer Western interventions plus shorter and less costly interventions for those which remain.

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v Etete was convicted of money laundering in France in 2007; Energy Venture Partners Versus Malabu Oil & Gas, Commercial court, Queen’s Bench Division, 2011-13. The case was brought by a broker who alleged that Etete failed to pay him for work he had done in obtaining a buyer for OPL245. Shell and Eni were not part of these proceedings.

 vi Global Witness, Shell’s Nigeria investments at risk from corruption scandal, investors warned, 19th May 2014. http://tinyurl.com/m25d9ad


xi See for example, the experiences of Hong Kong’s former anti-corruption Commissioner Bertrand De Speville on the need for educational reform to accompany legal approaches. http://tinyurl.com/lhm3tp

