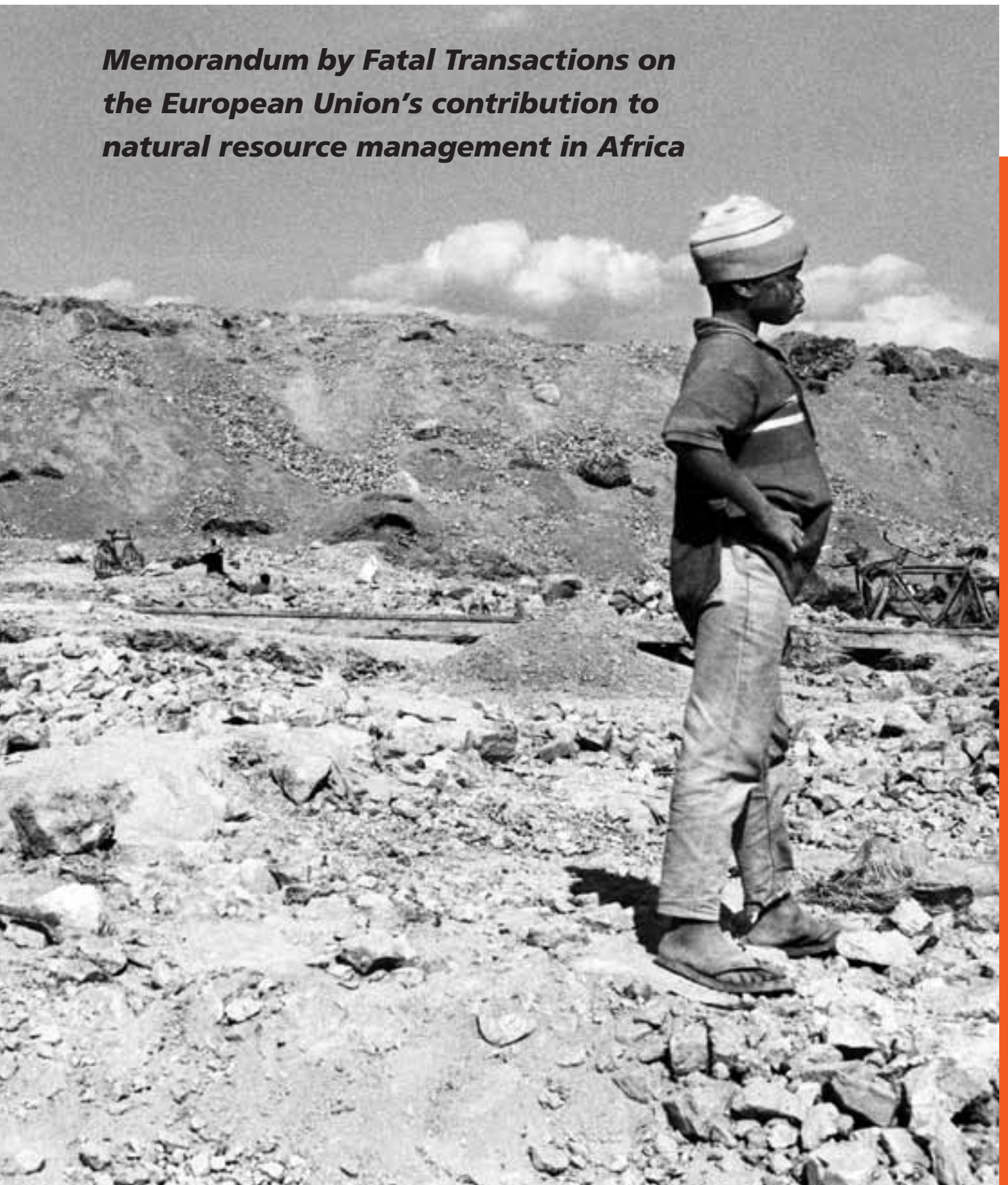


From conflict resources to sustainable development

*Memorandum by Fatal Transactions on
the European Union's contribution to
natural resource management in Africa*





July 2008

Fatal
Transactions



From conflict resources to



sustainable development

*Memorandum by Fatal Transactions
on the European Union's contribution to
natural resource management in Africa*





Contents

Preface 6

Introduction 7

I. The European Commission on natural resources in Sub-Saharan Africa 9

The EU-Africa relationship 9

The Commission's concrete strategies and programmes on natural resources 11

Strategy on good governance in Sub-Saharan Africa 11

Strategy on transparency in the extractive industries 12

Strategy on the protection and promotion of human rights 14

Strategy on the environment and the sustainable management of natural resources 17

Infrastructure as a strategy for growth in Sub-Saharan Africa 18

The implementation of the Commission's strategies 18

Bilateral agreements 19

The European Investment Bank 20

II. The Commission's approach on businesses' practices 25

EU approach towards business' activities 25

The consumption of extractive resources in Europe 26

III. The Commission's approach on trade and development 27

IV. The Commission's policy on conflict resources in Sub-Saharan Africa 29

Conflict prevention 29

Sanctions and Restrictive Measures 30

Conclusions 33

Recommendations to the European Commission 34

Recommendations to the European Parliament 37

Abbreviations 38



Preface

Fatal Transactions is a network of European and African NGO's and research institutes. Our campaign focuses on the trends and consequences of natural resource exploitation in (post-) conflict situations in African countries. The network was established in 2000 as the umbrella of European NGOs fighting the export of blood diamonds from countries such as Sierra Leone and Angola. In this respect Fatal Transactions took part in the negotiations on the Kimberley Process Certification Scheme which started its implementation in 2003. We, as a network, also engage in a constructive dialogue with the European institutions on how it can contribute to a sustainable management of natural resources in Africa.

The African wealth of natural resources contributed too often to violent conflict and structural violence. Fatal Transactions believes strongly that if natural resources are exploited in a responsible way, it can be an engine for conflict prevention, peace building and reconstruction, and can contribute to the sustainable development of the country. The process of shifting fatal transactions into fair transactions, however, requires an investment from all parties involved in the supply chain, including from the European Union, given that it is the world's largest donor in Africa and is the continent's most important economic and trade partner.

In order to contribute to this process Fatal Transactions analysed the European Commission's approach on natural resources management. The conclusions can be found in this Memorandum. We learned that the European Commission places sustainable development prominently in its agenda. Moreover it considers the concept of transparency, good governance, the promotion of human rights, energy efficiency and sustainability as important to the exploitation of natural resources.

We see, however, some problems in the Commission's contribution to natural resources management. The resulting policy neither constitutes a whole nor are those consistent and comprehensive. Another serious point of critics is that the majority of the commitments are not translated into practice. The Commission repeatedly voices its concern on natural resources conflict sensitivity, unsustainable natural resources management and underdevelopment, but does not entail a sound strategy when its objectives are not implemented. And where actions (directly or indirectly) in the sphere of natural resources management are planned, third-party evaluation is not possible due to a lack of public dissemination of the information.

Fatal Transactions will use this Memorandum as a guide for its dialogue with the European institutions.

Anneke Galama
Coordinator Fatal Transactions

Introduction

Natural resources, such as oil, diamonds, coltan and gold, can be and have been an engine for growth in African countries. The exploitation of natural resources in Africa has however, been associated in many occasions with unsustainable management, underdevelopment and violent conflict. Armed conflicts have even become self-financed, as the private actors in the conflicts have increasingly relied on natural resource revenues to fund military activity.

Extractive companies can play a dubious role in this process, especially when they find themselves in situations where local rule of law and governmental institutions are weak or absent. While most companies do not deliberately seek to profit from violence, their investments and operations could contribute to poverty and insecurity.

Therefore, when addressing the link between natural resources and conflict, various stakeholders have to be involved: governments of producing, transit and importing countries; multilateral bodies and financial institutions; the private sector in its various dimensions (such as extractive industries, brokers, traders, private financial institutions); and civil society. In order to contribute to a process of natural resources as inherently good and as an engine for sustainable development, all stakeholders in the natural resources supply chain must ensure that lessons learned about improving natural resource governance are captured and integrated.

This Memorandum looks specifically at the European Commission's contribution to a sustainable exploitation of natural resources in Africa and a sustainable supply chain. It also assesses its approach on conflict resources. The paper provides an analysis of the Commission's trade policy, development cooperation, foreign and security policy, cooperation under bilateral and multilateral agreements, humanitarian aid and financial assistance. It also takes a look at the Commission's view on integrating and implementing external actions in its internal policies (e.g. energy and environment) in order to promote a sustainable management of natural resources abroad. The geographical focus of the research is Sub-Saharan Africa, given that the European Union is the world's largest donor in Africa and is the continent's most important economic and trade partner.

The Memorandum concludes with recommendations to the European Commission and European Parliament for contributing to a process of natural resources exploitation as inherently good and as an instrument of sustainable development.





I. The European Commission on natural resources in Sub-Saharan Africa

The first part of this chapter provides an analysis of the European Commission's proclaimed objectives in the sphere of natural resources management in Africa, and its targets and strategies to reach those. The second part evaluates the Commission's concrete actions.

The EU-Africa relationship

The European Community provides a strong legal basis for development cooperation in its *"Treaty Establishing the European Community"*. In accordance with Article 177 of the Treaty, the purpose of the Community policy in the sphere of development cooperation is to foster:

- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them;
- the smooth and gradual integration of the developing countries into the world economy; and
- the campaign against poverty in the developing countries.

The same article stipulates that the European Commission "shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms."

The European Commission identifies two chronic areas of natural resources related conflict and instability in Africa: the Mano- River region in West Africa and a line extending from Sudan and the Horn of Africa down to eastern Congo in eastern and central Africa.¹ The two areas are dominated by a large number of countries in conflict as well as by a high proportion of fragile states² that "lack credible, legitimate and/or effective governance."³

The first case, the Mano River sub-region, includes countries such as Guinea, Liberia and Sierra Leone. Fuelled by the presence of considerable natural resources, including diamonds and timber, over the last ten years conflict has spread across borders and engulfed the entire region in a severe refugee crisis, further contributing to the regional instability. Because of these conflicts, Guinea has become the haven for up to one million refugees. This instability has also had an impact beyond the region, affecting the Casamance-region of Senegal in the north-west and, since 2002, Côte d'Ivoire in the east.⁴

The Commission traces a second line of insecurity from Sudan and the Horn of Africa, across the Central African Republic and northern Uganda to eastern Congo. These conflicts are fed by a complex pattern of structural causes, such as poor management of scarce natural resources, bad political governance, uncontrolled refugee flows, inter-regional trade in arms and trafficking in human beings.⁵ At the same time, recent analysis of the Commission points to the sustainable exploitation of natural resources combined with the creation of a sound investment climate as one of the central drivers of growth.⁶ This

1 Communication from the European Commission to the Council, the European Parliament and the European Economic and Social Committee; EU Strategy for Africa: towards a Euro-African Pact to accelerate Africa's development, COM(2005) 489 final, Brussels. 12 October 2005.

2 Fragile States are often weakened by endemic crises and conflicts or natural disasters.

3 EU Strategy for Africa: towards a Euro-African Pact to accelerate Africa's development, COM(2005) 489 final, Brussels. 12 October 2005.

4 *Ibid*, page 11.

5 *Ibid*.

6 *Ibid*, page 12.

7 *Ibid.*

8 Commission Working Paper, EU Report on Policy Coherence for Development, COM(2007)545 final.

9 EU Strategy for Africa: towards a Euro-African Pact to accelerate Africa's development, COM(2005) 489 final, Brussels. 12 October 2005. This issue has been elaborated further in its "MDG Package". The aim of this Package is to make a contribution to the formulation of a European common position. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The EU – a global partner for development, Speeding up progress towards the Millennium Development Goals, COM(2008)177 final.

10 *Ibid.*

11 Partnership Agreement between the Members of the African, Caribbean and Pacific (ACP) Group of States of the one part, and the European Community and its Member States, of the other part, 23 June 2000. Revised in 2005, signed on 23 February 2005.

12 *Ibid.*

13 *Ibid.*, Article 32.

14 The Africa-EU Strategic Partnership: Joint Africa-EU Strategy and Action Plan, 9 December 2007.

15 *Ibid.*, page 2.

16 *Ibid.*

17 *Ibid.*

18 EU Strategy for Africa: towards a Euro-African Pact to accelerate Africa's development, page 3.

19 *Ibid.*, page 6.

20 The Africa-EU Strategic Partnership: Joint Africa-EU Strategy and Action Plan, page 15.

21 Joint Statement by the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission, The European Consensus on Development. 22 November 2005.

requires providing African nations with a solid foundation of predictability and security.⁷ The European Commission has therefore chosen to tackle the issues related to conflict resources and non-sustainable resources management. In this respect, it is an element in its "comprehensive, integrated and long-term framework for its relations with the African continent"⁸: the *"EU Strategy Paper for Africa"*. The principle objective of this strategy paper is "to promote the achievement of the UN Millennium Development Goals (MDG's) in Africa."⁹

This objective "is strengthened and complemented"¹⁰ by the specific objectives pursued within the Cotonou Agreement and other African partnerships. The Cotonou Agreement provides the legal basis for EC cooperation with the African, Caribbean and Pacific States (ACP States). It integrates three dimensions, namely politics, trade and development.¹¹

One important element in the Commission's view is that it should mainstream its objectives. This is also formulated in the Cotonou Partnership. Article 1 of the partnership stipulates that the agreement is "centred on the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy. These objectives and the Parties' international commitments shall inform all development strategies and shall be tackled through an integrated approach taking account at the same time of the political, economic, social, cultural and environmental aspects of development. The partnership shall provide a coherent support framework for the development strategies adopted by each ACP State."¹² Article 32 of the Agreement stipulates some key areas of support in the sphere of environment and natural resources. The two relevant ones in the field of extractive industries management are the following: mainstreaming environmental sustainability in support programmes and actions, and supporting and addressing regional and international commitments concerning mineral resources.¹³

This EU Strategy for Africa was further discussed at the EU-Africa Summit in Lisbon in 2007¹⁴. The conclusion of the summit was that there is "a need for a new phase in the Africa-EU relationship, a new strategic partnership and a Joint Africa-EU Strategy as a political vision and roadmap for the future cooperation between the two continents in existing and new areas and arenas."¹⁵ The Joint Strategy aims to "provide an overarching long-term framework for Africa- EU relations"¹⁶, and shall "be implemented through successive short-term Action Plans and enhanced political dialogue at all levels, resulting in concrete and measurable outcomes in all areas of the partnership."¹⁷

One of the key issues in the European Commission's Strategy (2005) is to promote the sound management of natural resources in Africa in order to tackle the environmental root causes of many conflicts.¹⁸ It concludes, "the only way to protect the livelihood of Africa's poor in the medium and long term is to making Africa's development sustainable."¹⁹ It came to the same conclusion at the Summit in Lisbon and decided to continue its support to Africa's capacity building efforts in the sustainable management of natural resources.²⁰

The European Commission incorporated the same objective in its *"European Consensus"*²¹ and the *"Thematic Strategy on the Sustainable Use of Natural Resource"*.²² This is a consequence of its analysis in 2005 that "for too long the EU's relations with Africa have been too fragmented, both in policy formulation and implementation: between the different policies and actions of EU Member States and the European Commission; between trade cooperation and economic development cooperation; between more traditional socio-economic development efforts and strategic political policies. Neither Europe nor Africa can afford to sustain this situation."²³ The Commission therefore

took initiatives to build synergies between the various policies and development objectives. The Commission argues that this investment will “in turn increase the effectiveness of development aid. Against the backdrop of the EU commitment to substantially increase official development assistance, the importance of ensuring that these resources are not rendered inefficient or wasted by policy incoherence is even greater.”²⁴

In short, natural resources and its destabilising as well as stabilizing potential impact in sub Sahara Africa has been addressed by the EC over the last couple of years. Natural resources is linked into the EC’s thinking on sustainable development. The following section will look at how this has been translated into strategies and programs.

The Commission’s concrete strategies and programmes on natural resources

Strategy on good governance in Sub-Saharan Africa

The European Commission sees the democratic governance and the protection of human rights as key elements to reach a sustainable natural resources management.²⁵ An approach on good governance has been agreed between the ACP countries and the EU in the Cotonou Agreement. It defines good governance as “the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aiming in particular at preventing and combating corruption.”²⁶ This definition of good governance in a broad sense covers the aspects of the definition that is conceived by the United Nations, the World Bank and several other agencies. Good governance in their view consists of two major dimensions. The political dimension can be broken down into four key components: government legitimacy; government accountability; government competence; and rule of law (human rights). The economic dimension also has four components: public sector management; organizational accountability; rule of law (contracts, property rights); and transparency (including freedom of information).

The European Commission deepened its view on how to approach good governance in a 2003 communication paper on governance and development.²⁷ It addresses not only institutional capacity-building in the area of good governance but also the rule of law as one of the six priority areas for EC development policies. The Commission’s work also covers some priorities such as an in-country dialogue on governance, policy dialogue with its partner countries, security and development, consultation procedures on human rights and the fight against corruption. The integration of these objectives in all levels of work in its relationship and dialogue with Africa is, on paper, at the top of the agenda for the Commission. The objectives are relatively coherent with the view of the UN, World Bank and other donor agencies on good governance. The Commission’s actions regarding the relationship with its partner countries are evaluated later in Chapter 2 of this paper.

One serious point of critics is that only a few of the various aspects of good governance (as mentioned above) are included as fundamental elements in the Cotonou Agreement: corruption and the rule of law (human rights). Serious cases of corruption, including acts of bribery leading to such corruption “constitute a violation of that element and give rise to consultations between

22 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Thematic Strategy on the Sustainable Use of Natural Resources, COM(2005)670. 21 December 2005. The European Consensus “formulates for the first time a common vision that guides action of the EU, both at its Member States and Community levels.”

23 *Ibid*, page 2.

24 Commission Working Paper, EU Report on Policy Coherence for Development, COM(2007)545 final.

25 The Africa-EU Strategic Partnership: Joint Africa-EU Strategy and Action Plan, pages 7 and 35.

26 The Cotonou Agreement, Article 9.3.

27 Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, Governance and Development, COM(2003)0615 final. In this COM, the Commission sets out its main issues and basic principles related to governance and development.

28 *Ibid.*

29 *Ibid.*, Article 97, paragraph 3.

30 EU Strategy for Africa: towards a Euro-African Pact to accelerate Africa's development, page 3.

31 *Ibid.*

32 The other three issues are governance and human rights, trade and regional integration and key development issues. The Africa-EU Strategic Partnership: Joint Africa-EU Strategy and Action Plan, page 4.

33 EU Strategy for Africa: towards a Euro-African Pact to accelerate Africa's development, page 21.

34 *Ibid.*

35 The Africa-EU Strategic Partnership: Joint Africa-EU Strategy and Action Plan, page 6.

36 The Commission has been actively involved in the Kimberley Process, including attempts to set up such a system in line with UNGA Resolution 55/56. The Commission argued in its COM(2001) 211 on conflict prevention that "if such a certification system had been in existence earlier, the UN sanctions against 'conflict diamonds' could have been more effective." Footnote added to the quote.

37 The Africa-EU Strategic Partnership: Joint Africa-EU Strategy and Action Plan, pages 9 and 37.

the European Commission and the Party involved."²⁸ There is however no definition of "serious cases of corruption" in the Agreement. In the end, if the consultations between both parties do not lead to a solution acceptable to both Parties or if consultation is refused, then "the Parties shall take the appropriate measures. In all cases, it is above all incumbent on the Party where the serious cases of corruption have occurred to take the measures necessary to remedy the situation immediately. The measures taken by either Party must be proportional to the seriousness of the situation. In the selection of these measures, priority must be given to those which least disrupt the application of this agreement. It is understood that suspension would be a measure of last resort."²⁹ The real difficulty is, however, to decide what are 'appropriate measures'. The Agreement does not provide any definition of "appropriate measures" and this leaves room for a discretionary approach.

Strategy on transparency in the extractive industries

Transparency is a fundamental element of good governance and contributes to a competition amongst companies that doesn't turn into a race to the bottom in corruption, human rights and environment. Good practices of transparency initiatives in the extractive industries should include transparency on revenues, on how concessions are awarded, contracts negotiated, and how the money is spent. In this part we analyze the view on and approach to transparency of the Commission and Council.

The European Commission sees transparency in the extractive industries as one of its objectives to promote peace and security. The Commission argues that peace and security "are the first essential prerequisites for sustainable development."³⁰ Over the last few decades, "wars and violent conflicts in Africa have destroyed millions of lives and decades of economic development. The EU concluded therefore in 2005 to step up its efforts to promote peace and security at all stages of the conflict cycle."³¹ This is also one of the main objectives of the long-term strategic partnership that was discussed at the Summit in Lisbon in 2007.³²

Already in 2005, the Commission concluded that specific actions to promote peace and security "should include the development of a comprehensive approach to conflict prevention."³³ This seeks to integrate policies and action in the fields of security, development and democratic governance. The promotion of sound management of shared valuable resources "could also contribute to conflict prevention and sustainable peace."³⁴

The European Commission and African leaders came to the same conclusion at the Joint Summit in Lisbon (2007) but argued furthermore that, "issues relating to transnational organised crime, international terrorism, mercenary activities, and human and drugs trafficking, as well as the illicit trade in natural resources, which are a major factor in triggering and spreading conflicts and undermining state structures, are of particular concern."³⁵

To this end, Africa and the EU "will enhance cooperation in the context of international initiatives to counter the illicit trade and to promote the transparent and equitable management of natural resources, such as the Kimberley certification process³⁶, the Forest Law Enforcement Governance and Trade (FLEGT) and the Extractive Industry Transparency Initiative (EITI). Africa and the EU will also, together, address issues relating to the fight against corruption, bribery, counterfeiting, money-laundering, tax-fraud, as well as other aspects of economic governance. In this context, both sides will take measures to facilitate the investigation and return of illegally acquired assets, including funds, to their countries of origin."³⁷

The Commission's support to transparency initiatives and certification mechanisms seems therefore more directed towards the fight against illicit trade of natural resources, and less focused on a sustainable and sound management of the resources. This approach is inconsistent with the scope of the most well known international transparency initiative: the Extractive Industries Transparency Initiative (EITI). It is grounded on a shared belief that the prudent use of natural resource wealth has the potential to provide the basis for sustainable economic growth and development. This requires a focus that goes beyond the fight against illicit trade of natural resources. If natural resources are not managed properly, it can create negative economic and social impacts.

The European Council and the representatives of the governments of the Member States of the European Union have a more consistent approach to transparency than the European Commission. The European Council's meeting of 8-9 March 2007 underlined "the vital importance of an integrated energy policy combining action at European and Member States' level."³⁸ The European Council endorsed an Energy Action Plan for the period 2007-2009, which includes establishing a special dialogue on energy with African countries. The Council calls upon the Commission and its Member States "to promote the participation of countries and stakeholders as well as continue supporting the implementation of the global Extractive Industries Transparency Initiative (EITI)"³⁹ and "to strongly encourage European and European based trans-national companies to conform to standards set by the EITI and to promote the establishment of clear and simple transparency guidelines for companies in the energy sector in Africa."⁴⁰

The issue of transparency has also been addressed by the European Parliament. In a resolution adopted by the parliament on trade in raw materials, members of parliament ask the Commission to promote transparency of the revenues stemming from raw materials via programmes like the Extractive Industries Transparency Initiative (EITI) process.⁴¹

There are also several other European initiatives in the field of transparency. This Memorandum discusses three important ones: the fight against corruption, the flow of revenues especially from extractive industries into economic and social development, and the link with conflict prevention.

The Commission sees a clear link between transparency and the fight against corruption. It therefore expressed its support to the establishment and monitoring of "codes of conduct in the public sector."⁴² The Commission did not provide any concrete examples but could and should have included the EITI.

The European Council calls upon the Community and its Member States to "encourage and assist African partners in increasing the flow of revenues especially from extractive industries into economic and social development."⁴³ This goes beyond the scope of the EITI. The Council also recognises that "transparency in resource-induced cash flows is a key prerequisite for the development-oriented management of revenues from natural resources, and underlines that transparency is an essential precondition for improving the business environment."⁴⁴ Therefore, the Council calls upon the Community and its Member States to:

- assist African governments and their institutions in strengthening transparency in their decision-making processes and their negotiations with foreign extractive industries, including capacity building;
- promote the participation of countries and stakeholders as well as continue supporting the implementation of the global Extractive Industries Transparency Initiative (EITI);
- strongly encourage European and European based trans-national companies to conform to standards set by the EITI and to promote the establishment of

38 The Council of the European Union, Conclusions of the Council and the representatives of the Governments of the Member States meeting within the Council on Energy Cooperation between Africa And Europe. 15 May 2007.

39 *Ibid*, page 6.

40 *Ibid*.

41 European Parliament resolution of 20 May 2008 on trade in raw materials and commodities (2008/2051(INI)).

42 Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - On a comprehensive EU policy against corruption, COM/2003/0317 final.

43 The Council of the European Union, Energy Cooperation between Africa and Europe – Conclusions of the Council and the Representatives of the Governments of the Member States meeting with the Council. 15 May 2007.

44 *Ibid*, page 6.



45 Communication from the Commission to the Council and the European Parliament, Thematic Programme for Environment and Sustainable Management of Natural resources including Energy, COM(2006)20 final.

46 *Ibid*, page 10.

47 Steven Spittaels & Filip Hilgert, Mapping Conflict Motives: eastern DRC, IPIS, 2008.

48 Rafael Marques & Rui Falcão, Lundas The Stones of Death, NiZA & Fatal Transactions, 2005.

49 Louis Michel, European Commissioner for Development and Humanitarian Aid, "Europe-Africa: the indispensable partnership", speech 30 November 2007 at the Conference organised by the European Policy Centre.

clear and simple transparency guidelines for companies in the energy sector in Africa;

- encourage European and European based financial institutions to adhere to the Equator Principles and to implement the standards of the International Finance Corporation (IFC) related to transparent payments and contracts in the extractive sector; and
- strive to include other partners, in particular emerging donors and investors, in the dialogue on the above-mentioned issues.

The promotion of transparency in the natural resources sector has also been expressed in the Commission's *"Thematic Programme for Environment and Sustainable Management of Natural resources including Energy"*⁴⁵. One of the programming principles relates to conflict prevention and resolution. The programme sees energy resources as "a growing source of regional conflicts which threatens social and environmental stability. These conflicts can have a global effect (amongst other effects) as they may impact our energy supplies. In dealing with natural resources one has to take into account if income derived from these resources does not cause or fuel conflict, but rather fosters sustainable development. Specific support for transparency initiatives of extractive industries will contribute to monitor social and environmental consequences. Conscious disaster preparedness can also successfully contribute to the conservation of the environment and avoid negative impacts on the security of energy supplies."⁴⁶

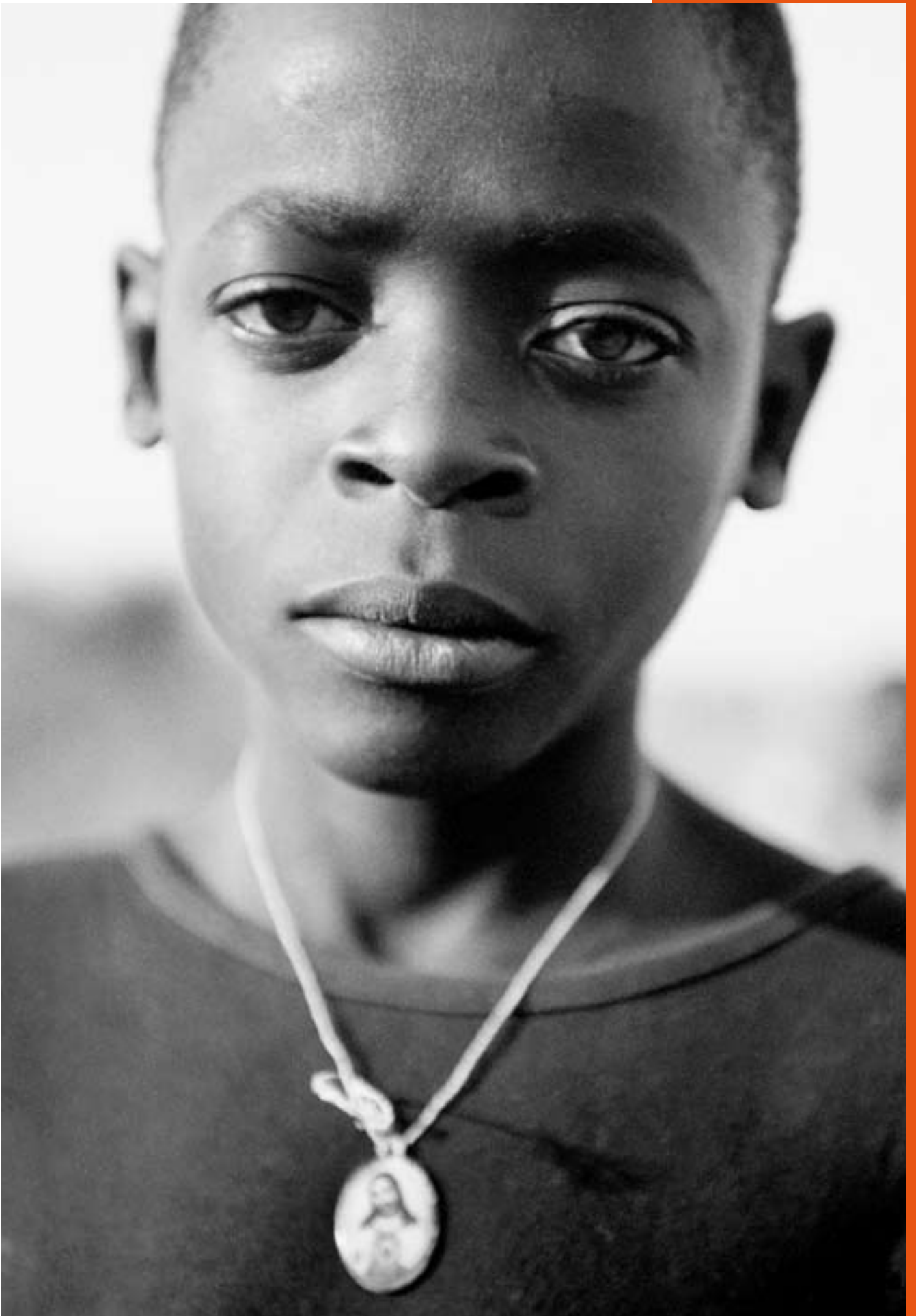
In this Thematic Programme the Commission looks at the bigger picture, which is not the case with its Lisbon Strategy (2007). Therefore the Commission clearly fails to mainstream its approach to transparency and to incorporate the recommendations made by the Council. The Council's suggestions are important first steps towards a more accountable system for the management of revenues in resource-rich countries and for a sustainable natural resources management. Other important steps are European company law, accounting standards, stock market listing rules and lending conditions of financial institutions and banks. Unfortunately, all these aspects are barely touched on by the European Commission.

Strategy on the protection and promotion of human rights

Fatal Transactions has well-documented cases of human rights abuses in the exploration and exploitation of natural resources.⁴⁷ Governments as well as companies have been implicated in human rights abuses. One example is the record of human rights abuses in the diamond-rich provinces of Lunda Norte and Lunda Sul throughout 2004 against both Angolans and foreigners.⁴⁸ Since the Angolan government launched its crackdown against diamond smugglers in the Lundas area, there have been reports of unrest and violence at the hands of both the national police and diamond companies' private security firms. Therefore, this Memorandum assesses the approach of the Commission to the protection and promotion of human rights. We first analyse the approach of the Commission in addressing human rights in its contacts with Africa. Additionally, we look at the Commission's approach to business practices in relation to human rights.

The Lisbon EU-Africa Joint Strategy and Action Plan proposes to set up a comprehensive partnership that is backed up by an Action Plan for 2008-2010, which in turn is structured around eight strategic partnerships designed to achieve action and results. One of the partnerships is the *"Africa-EU Partnership for Democratic Governance and Human Rights"*. It is a partnership that commits the individual Member States as much as the EU collectively.⁴⁹

The Africa-EU Partnership on Democratic Governance and Human Rights will



50 *Ibid.*

51 The 2000 Cotonou Agreement, Article 96, para. 2.c. The objectives of the dialogue and the procedures and explained in Annex VI, which are added to the 2000 Agreement in 2005.

52 The Cotonou Agreement states, "The 'appropriate measures' are measures taken in accordance with international law, and proportional to the violation. In the selection of these measures, priority must be given to those which least disrupt the application of this agreement. It is understood that suspension would be a measure of last resort."

53 Report of the Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises, "Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts", UN Doc. A/HRC/4/035. 9 February 2007.

54 Article 2(1) of the International Covenant on Economic, Social and Cultural Rights.

55 U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para. 39; U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002), The right to water, U.N. Doc. E/C.12/2002/11. 26 November 2002. Paragraph 31. See among others O. Deschutter, Extraterritorial Jurisdiction as a tool for improving the Human Rights Accountability of Transnational Corporations*, December 2006.

"enable a comprehensive continent-to-continent dialogue and cooperation on aspects and concepts such as local capacity strengthening, the protection of human rights and fundamental freedoms for all, democratic principles, the rule of law and equitable access to legal systems, management of natural resources, the fight against corruption and fraud, accountable management of public funds, institutional development and reform, global governance, and security sector reform."⁵⁰ The African Union already organised two regional consultations on the implementation of the Plan of Action of the Africa-EU Joint Strategy. The target is to implement the Strategy over a period of three years.

It is important that the European Commission continues to address the need to respect human rights and fundamental freedoms. It has been addressed in the Cotonou Partnership Agreement as an essential element. In this context, the Commission included a consultation clause on the respect of human rights and fundamental freedoms. The strategy is to exhaust all possible options for dialogue with the partner country. The Commission can "eventually take 'appropriate measures' when the consultations do not lead to a solution, if consultation is refused or in cases of special urgency."⁵¹ As in the case of the clause on corruption in the Cotonou Agreement, the real difficulty is to decide what are appropriate measures⁵². There are a few examples in which the Commission has used the Article as an instrument to protect human rights: measures concerning Mauritania, Ivory Coast, Liberia and even suspension of support to Zimbabwe. There are other African countries that violate gravely the human rights as enshrined in fundamental international law. Fatal Transactions already provided examples of such violations in Angola and the DRC. It is, however, not possible to assess the approach of the Commission towards these countries given the impossibility for the public to get access to relevant information such as high-level consultations and discussions between Europe and the countries.

There is, however, one aspect that is not included in each of the European strategy papers on Africa: the extraterritoriality principle of human rights treaties signed by the EU Member States, and which could be viewed within the application of the European Convention on Human Rights. International law "firmly establishes that States have a duty to protect against non-state human rights abuses within their jurisdiction, and that this duty extends to protection against abuses by business entities."⁵³ Consequently, the human rights norms may be applied on business enterprises indirectly through national courts and tribunals. Business must, of course, observe the laws in all countries in which they operate. There is also a growing debate on the extraterritoriality principle. For instance, the International Covenant on Economic, Social and Cultural Rights provides that each State Party to the Covenant "undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights."⁵⁴ In order to achieve the obligation, the UN Committee on Economic, Social and Cultural Rights noted on several occasions that State parties have an obligation to protect the rights of people under the jurisdiction of other States when they would be threatened by the activities of private actors whose behaviour a State may decisively influence.⁵⁵ Consequently, there is a legal space to introduce extraterritorial jurisdiction in its legislation. Neither the Commission nor the Member States have, however, a clear vision on this issue. The principle "to protect" goes beyond the scope of the initiatives of the Commission in promoting human rights and fundamental freedoms abroad, as provided in the Commission's Cotonou Agreement and Action Plans.

Strategy on the environment and the sustainable management of natural resources

The exploration and exploitation of natural resources through large and small scale mining operations frequently cause irreversible environmental damage. Examples are the destruction of habitats and migratory routes of migratory species or of habitats and corridors of fauna and flora that are critically endangered, endangered, vulnerable or near threatened. Another area of concern is that the exploitation of fossil fuels increases greenhouse gas emissions that contribute to climate change. Environmental damage can also have a direct impact on the lives and livelihoods of people, such as health problems and social tensions. This chapter therefore analyses the approach of the Commission to the promotion of sustainable natural resources management.

The sustainable management of natural resources is, on paper, one of the objectives of the European Commission and Member States. The Community has outlined in its 2005 renewed European Community Development Policy (the European Consensus) the importance of the incorporation of environmental considerations into development and to help increase the capacity of the partner countries to implement multilateral environmental agreements.⁵⁶

The principles and priorities on sustainable management of natural resources and the incorporation of environmental considerations are elaborated in the "Thematic Programme for Environment and Sustainable Management of Natural Resources Including Energy". One of the priorities of the Thematic Programme is the support of measures that addresses the environmental dimension of external policy, especially development policy, and to promote the EU's environmental and sustainable energy policy abroad. The programme is "additional to and coherent with actions funded under the geographical instruments."⁵⁷ In this regard, the Commission will produce annual work plans which establish priority actions to be supported, specific objectives, anticipated results as well as indicative amounts. In the sphere of energy resources, the Commission plans € 158,9 million (period of 2007-2013) for three priorities in the field of promoting energy efficiency and renewable energy.⁵⁸ It also plans to "develop institutional support and technical assistance and enhancing participation in global partnerships (e.g. gas flaring, EITI), strengthening the capacity for policy development, regulation and energy planning, including through support for twinning initiatives to share EU experience and to establish links with key countries, and designing well targeted public procurement."⁵⁹

Cooperation on environmental protection and sustainable utilisation and management of natural resources is one of the themes in the Cotonou agreement. It aims at:

- mainstreaming its various policies,
- building and/or strengthening the scientific and technical human and institutional capacity for environmental management for all environmental stakeholders; and
- supporting specific measures and schemes aimed at addressing critical sustainable management issues and also relating to current and future regional and international commitments concerning mineral and natural resources such as tropical forests, water resources, coastal, marine and fisheries resources, wildlife, soils, biodiversity; protection of fragile ecosystems (e.g. coral reef); and desertification, drought and deforestation.

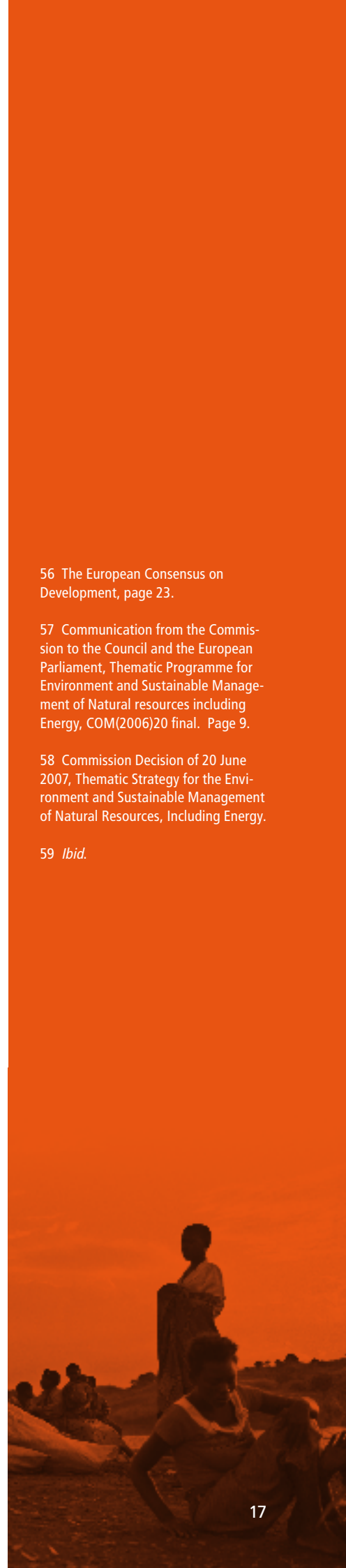
The Commission's actions regarding the relationship with its partner countries are evaluated later in Chapter 2 of this paper. The analysis provides evidence that there is a serious gap between the European objectives on promoting a sustainable management and its concrete actions.

56 The European Consensus on Development, page 23.

57 Communication from the Commission to the Council and the European Parliament, Thematic Programme for Environment and Sustainable Management of Natural resources including Energy, COM(2006)20 final. Page 9.

58 Commission Decision of 20 June 2007, Thematic Strategy for the Environment and Sustainable Management of Natural Resources, Including Energy.

59 *Ibid.*



60 EU Strategy for Africa: towards a Euro-African Pact to accelerate Africa's development, page 29.

61 *Ibid*, page 29.

62 *Ibid*.

63 Communication from the Commission to the Council and the European Parliament, Interconnecting Africa: the EU-Africa Partnership on Infrastructure, COM(2006)983 final.

64 Even though a heading has been reserved for the European Development Fund (EDF) in the Community budget since 1993 following a request by the European Parliament, the EDF does not yet come under the Community's general budget. It is funded by the Member States, is subject to its own financial rules and is managed by a specific committee.

65 Grant-to-grant financing (capacity building, regional initiatives and facilitation programmes; support to African roads and water sectors) and the Trust Fund.

66 Website Europa: Gateway to the European Union, viewed on 23 May 2008.

Infrastructure as a strategy for growth in Sub-Sahara Africa

The Commission also sees Africa's limited access to transport and communication services, water and sanitation, and energy as a constraint to Africa's economic growth.⁶⁰ The "potentially lucrative use of natural resources becomes unprofitable due to insufficient or unsuitable infrastructure and trade links."⁶¹ Consequently, "national economic growth is stifled and the ability of African countries to trade competitively at regional, continental and international level is held back."⁶² The Commission therefore has established an "*EU-Africa Partnership for Infrastructure*" in order to support and initiate programmes that facilitate interconnectivity at continental level for the promotion of regional integration.⁶³

The Partnership will receive a basic amount of € 5.6 billion from the 10th European Development Fund⁶⁴ (EDF, 2008-13). The Partnership will be also supported by a new EU Infrastructure Trust Fund for Africa, set up together with and managed by the European Investment Bank (EIB) and can get allocations for regions and countries and intra-ACP resources⁶⁵. It aims to support programmes that facilitate interconnectivity at continental and regional level. These approaches "will ensure that investments at continental and regional level are coherent with national poverty reduction and infrastructure strategies. The Partnership will cover infrastructure in the broadest sense; transport networks, water and energy infrastructure and connections and ICT networks. As the Partnership operates at three levels - continental, regional and national – the subsidiary rule should apply within an overall framework that provides the minimum coordination required for efficient and effective operations."⁶⁶

The EIB's management of the Fund is evaluated later in Chapter 2 of this paper. The analysis provides evidence that the EIB does not have environmental, human rights and social safeguard policies in place that are coherent with the EU's and its Member States' values and objectives in the protection and promotion of the rights of people and to protect the biodiversity and environment globally.

The implementation of the Commission's strategies

It is positive that the European Council and Commission have set out their political dimension in the sphere of natural resources and that they determine sustainable natural resources management as one of its priorities. Their strategy is also focused on building synergies between the various policies and development objectives, at the same time taking into account the political, economic, social, cultural and environmental aspects of development. This also relates to making commitments concerning good governance, the protection and promotion of human rights and fundamental freedoms, energy efficiency and renewable energy sources.

This part of the Memorandum provides an analysis of the Commission's practices on sustainable natural resources management in its relationship with Africa. This part must be read to complement our assessment on energy efficiency, sustainable energy and the promotion of a sustainable natural resources management in Africa, which have been commented on in this Memorandum elsewhere. The analysis is not complete given the impossibility for the public to get access to all relevant information, including high-level discussions between Europe and Africa.

Bilateral agreements

The best places to look at for information on concrete actions are the Country Strategy Papers⁶⁷ and National Indicative Programmes⁶⁸. Those include, in theory, the objectives in the Cotonou Partnership Agreement, and could be additionally supported by external actions such as, among others, the Thematic Programmes. The analysis is geographically limited to Zambia, Namibia and Botswana.⁶⁹ We could not assess the other papers and programmes because the Commission is still in negotiations with potential partners such as Angola and the Democratic Republic of Congo.

The main conclusion of the assessments of the Strategy Papers on Zambia and Namibia is that there is a serious gap between the European objectives and its concrete actions as defined in the Indicative Programme. Almost none of the Commission's objectives are translated in concrete actions. There are however many reasons which support specific interventions by the Commission in the two partner countries' natural resources management.

Mining in Zambia (mostly copper) represents 6% of GDP and provides nearly 70% of export earnings. Namibia has a well-developed mining industry based on world-class deposits of diamonds and uranium as well as a number of vibrant smaller mines producing copper, gold, zinc and lead. Mining is still the largest foreign exchange earner of Namibia (> 50% of exports) and contributes approximately 10% to the GDP. The mining activities in Zambia and Namibia have however contributed seriously to the environmental problems that both countries face today, such as land degradation and contamination, wildlife depletion, the loss of endangered ecosystems, and industrial noise, dust and air pollution. In Namibia, new prospecting licenses are even attributed to international companies for petrol and diamonds in some protected areas. The Commission however does not identify any significant interventions and targets in order to contribute to sustainable natural resources management in both countries. The Commission's main focus is on human resources development. This could indirectly contribute to sustainable natural resources management but this is not explored in the Papers.

The environmental problems are not the only issues that need to be addressed. The Government of Zambia considered, and already initiated⁷⁰, a renegotiation strategy for some contractual agreements in the copper sector, struck with private companies under much less favourable international price conditions.⁷¹ The Commission could contribute to this process in providing technical input or financial support to an independent auditing of the contractual agreements. Unfortunately, this is neither suggested nor planned.

The Commission's support to government effectiveness, good governance and the protection and promotion of human rights is limited to a few not well-defined commitments and intentions. Even when the issues are addressed in the country strategy papers, the Commission does not evaluate the implementation of those in practice, and is therefore failing to understand the effectiveness of the laws and the governmental actions in reality.

The Commission's support to EITI and transparency in the extractive industries sector is not translated in the Strategy Papers. Both papers neither assess the transparency aspect in the sector nor the involvement of relevant civil society in the decision-making process. The Strategy Paper of Zambia only indicates an expressed interest by Zambia in participating in the EITI. The wording in the Strategy Paper in Namibia is stronger. The Government of Namibia commits to review the EITI and potentially sign on to it. However, both countries are neither candidate nor compliant countries to the EITI.

The European Commission sees Botswana as a model for the use of natural

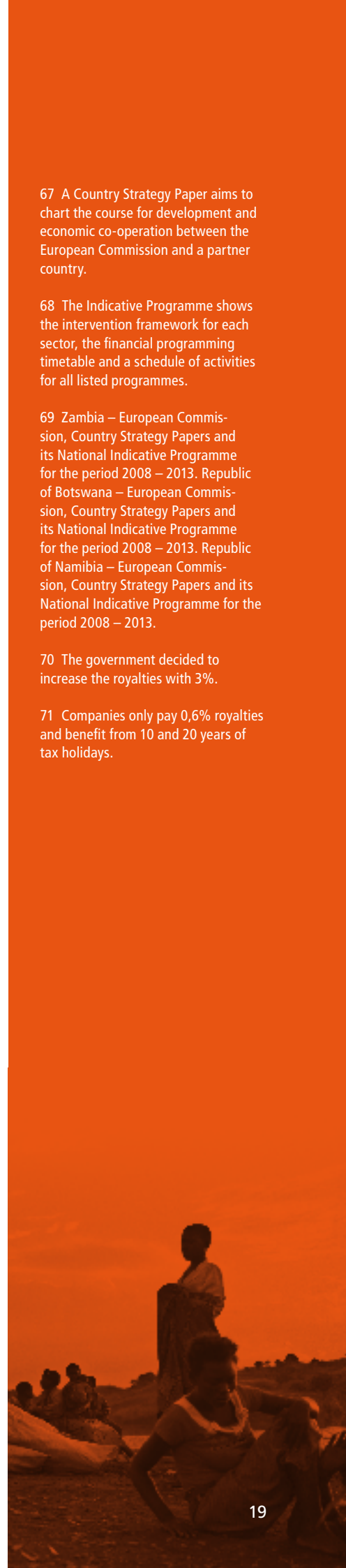
67 A Country Strategy Paper aims to chart the course for development and economic co-operation between the European Commission and a partner country.

68 The Indicative Programme shows the intervention framework for each sector, the financial programming timetable and a schedule of activities for all listed programmes.

69 Zambia – European Commission, Country Strategy Papers and its National Indicative Programme for the period 2008 – 2013. Republic of Botswana – European Commission, Country Strategy Papers and its National Indicative Programme for the period 2008 – 2013. Republic of Namibia – European Commission, Country Strategy Papers and its National Indicative Programme for the period 2008 – 2013.

70 The government decided to increase the royalties with 3%.

71 Companies only pay 0,6% royalties and benefit from 10 and 20 years of tax holidays.



72 Botswana remains heavily dependent on diamond production, which accounts for about three-quarters of export, one-third of GDP, half of government revenue and 3% of total formal sector employment.

73 The European Investment Bank was created by the Treaty of Rome in 1958 as the long-term lending bank of the European Union. The Bank is owned by the European Member States.

74 Website European Investment Bank, viewed on 19 May 2008.

75 The European Investment Bank, Environmental and Social Practices Handbook, September 2007.

76 Environmental and Social Practices Handbook, page 11.

resources for development. This argument is based on its assessment that natural resources, and in particular minerals (especially diamonds⁷²), have been largely responsible for the transformation of the Botswana economy and for improvements in living standards. Botswana's mineral sector faces however several challenges. Despite environmental laws regulating all mineral activities, some have serious negative impacts, including pollution of the air, land and water. The Commission therefore concludes that the country needs to improve the implementation of national and international environmental commitments. It, however, does not provide any concrete joint actions.

There is also little use of environmental economic instruments (tariff study, taxes, etc.) to complement environmental legislation in seeking efficient and sustainable use of resources. And despite the fact that Botswana signed the International Labour Organization (ILO) Convention on minimum age of child labour and the ILO Convention on the worst forms of child labour, the ILO projected in 2000 that 14,4% of children aged 10 to 14 years old were economically active. Despite this, no interventions are planned.

The Commission criticises other donor work due to a lack of a single coherent programme in the sphere of improving the management of natural resources in Botswana. Nevertheless, it neither provides any solution nor is its own programming coherent. Its objectives are not translated in the EU - Botswana Paper and Programme and the interventions in the promotion of human rights, good governance, transparency and environmental sustainability are not specific.

The European Investment Bank

One major outcome of the Cotonou Agreement was the establishment of the Investment Facility (IF), a facility intended as a risk-sharing financing instrument for investment projects in most sectors of the economy. This includes projects in the commercially run public sector and in the infrastructure. The IF mandated the European Investment Bank⁷³ (EIB, also referred to as 'the Bank' in this paper) to support the private sector by investing € 2.2 billion of EU funds in ACP countries between 2003 and 2008 under the EU's 9th European Development Fund (EDF) allocation. The EU recently allocated an additional € 1.5 billion to the investment facility under the 10th EDF allocation, which covers the years 2008 to 2013.⁷⁴ Such projects have included two major loans in the copper sector in Zambia (Kansanshi and Mopani), and in the mining sector in Botswana.

There are a number of shortcomings with the EIB. There is also a lack of coherence with many of the Commission's values and objectives, particularly those reflected in the Commission's strategy papers to promote sustainable natural resources management. Examples of the shortcomings are:

- The Bank has no policy on good governance and assessment of conflict sensitivity.
- For all projects located outside the EU, the Bank benchmarks the projects against EU law, taking local conditions into account.⁷⁵ This requires that the following local conditions must be met: the host countries' ability to pay, the local environmental considerations, technical appropriate measures to avoid pollution, international good practice and the least cost solution. Those terms are, however, not further explained and this procedure leaves space for a discretionary approach.
- In all cases, projects have to comply with related national and relevant international environmental legislation.⁷⁶ This is a minimum approach given that one should look at the transposition of international rules in national law. It also provides a race to the bottom in countries that have not signed on to relevant international conventions. It therefore does not meet the objec-

tive of the Commission to promote a sustainable natural resources management.

- Where the impacts of projects are expected to be “significant”, a special biodiversity assessment must be carried out.⁷⁷ The Bank, however, does not provide any definition of “significant” and, therefore, leaves room for a discretionary approach.
- If a project would significantly alter or degrade natural habitats, feasible alternatives should be examined.⁷⁸ The Bank, however, neither provides a definition of significant nor of feasible alternatives.
- The Bank’s social safeguards approach on population movements and impacts on vulnerable groups is pillared on the various agreements that have been signed by the EC with the ACP countries and the approach in the Development Policy and various components of EU social policy.⁷⁹ The approach is not worked out in detail. A good framework here would be the Council’s six “*EU Guidelines on Human Rights*” which provide orientation to the various EU actors, and Member States missions and Commission Delegations in third countries, on human rights issues of particular importance.
- Consequently, the Bank made the following statement in its environmental and social practices handbook: “the EIB can only confirm compliance with Community policy and with legislation to the best of its knowledge.”⁸⁰

The Bank’s general framework on its environmental and social principles and standards are under a process of revision.⁸¹ The Bank’s first draft is an improvement to its 2004 general framework⁸² but the changes still do not reflect many of the Commission’s values and objectives, particularly those in the sphere of sustainable natural resources management (good governance, protection of human rights, assessment of conflict sensitivity, etc.).

The EIB also has “own resources”, meaning funding from the European Commission and manages several other European Facilities⁸³. In June 2007, the Board of Directors approved the “Bank’s proposal for a more flexible use of the Bank’s “own resources” towards financing of operations with higher risk profile. As a result, “own resources” lending in the ACPs is expected to rise. This will partly counter the existing scarcity of resources under the IF and allow the Bank to maintain an overall reasonable level of activity in the ACPs.”⁸⁴ Overall annual commitments in the ACPs are forecast to reach up to € 450 million under the IF, with due regard to the revolving character of this facility, and € 350 million under own resources over the 2008-2010 period. With regard to technical assistance, yearly commitments are likely to be around € 10 million.⁸⁵

The provision of long term financing for infrastructure projects will remain a key element of the Bank’s strategy in the ACPs and will be supported by a new “own resources guidelines” on the one hand and by the implementation of the EU-Africa Infrastructure Trust Fund on the other hand.⁸⁶ Renewable energy will be given particular attention due to the Bank’s overall strategic objectives to increase energy lending and in particular to promote renewable energy through various instruments that are also available to ACP operators.⁸⁷

The European Commission reinforced the EIB’s mandate that projects “eligible for bank financing outside of the European Community is only possible when the Bank participates in implementing the Union’s development aid and cooperation policies.”⁸⁸ The mandate was adopted by the Council in December 2006, which authorises the EIB to lend up to € 27.8 billion with an EU guarantee. The Council Decision requires:

- The consistency of the Bank’s external actions with the external policies and objectives of the Community to be strengthened. and
- A substantive mid-term review of EIB external financing which will be conducted by 2010.⁸⁹

77 *Ibid*, page 29.

78 *Ibid*, page 43.

79 *Ibid*, page 109.

80 *Ibid*, page 22.

81 The European Investment Bank has put a first draft version of a new Statement of Environmental and Social Principles and Standards published on its website on 18 March 2008.

82 The European Investment Bank, Environmental Statement, 2004.

83 The Water Facility, the EU-Africa Infrastructure Trust Fund and the European Financing Partners framework.

84 The European Investment Bank, Corporate Operational Plan 2008-2010.

85 *Ibid*, page 19.

86 *Ibid*.

87 *Ibid*.

88 Council Decision of 19 December 2006 granting a Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community.

89 This review, which will be fully informed by an independent external evaluation to be transmitted to the Council, will provide the basis for a decision by Member States whether and to what extent to release any optional mandate topping-up possible lending in the period following 2010. In the second stage of the review, they make other amendments to the mandate, and discuss how to ensure maximum added value and efficiency in the EIB’s operations. The Commission will present the mid-term review to the European Parliament and to the Council by 30 June 2010, as the basis for any proposal for the amendment of the mandate. The Council will decide as appropriate after consulting the European Parliament.

90 Answer from the European Investment Bank on questions from J. Capelle, researcher IPIS. 22 May 2008.

91 Raf Custers & Sara Nordbrand, *Risky Business, The Lundin Group's involvement in the Tenke Fungurume Mining project in the Democratic Republic of Congo*. IPIS/ Swedwatch, 19 February 2008.

92 European Investment Bank, press-release Tenke Fungurume Mining project, Democratic Republic of Congo (DRC). 2 August 2007.

93 Gécamines, or La Générale des Carrières et des Mines, is a state-owned mining company in the Democratic Republic of Congo.

94 Raf Custers & Sara Nordbrand, *Risky Business, The Lundin Group's involvement in the Tenke Fungurume Mining project in the Democratic Republic of Congo*. IPIS/Swedwatch, 19 February 2008.

The Council Decision and the pressure of a mid-term review are very critical to ensure more objective financing by the EIB. The Bank has recently come under serious scrutiny by civil society for the financing of projects in Africa that neither meets the Bank's environmental and social policies nor the European Commission's external policies and objectives.

One concrete example of the Bank's shortcomings to reflect the Commission's external values and objectives is the Bank's loan to the Tenke Fungurume Project in DRC. The Bank approved a loan under its Risk Sharing (Own Resources with a full third party commercial guarantee) under the Cotonou Mandate.⁹⁰

The project, run by Tenke Fungurume Mining s.a.r.l. (TFM), is one of the biggest projects in Katanga and plans to extract copper and cobalt in 2009. Particularly important is that its reserves contain an exceptionally high degree of copper and cobalt ore.⁹¹ Non-governmental organisations brought serious issues and problems to the Bank's and promoter's (meaning, the client's) attention:

- The Bank approved a loan at a moment when the Tenke mining licence was under review by the Government of the DRC. Civil society asked the Bank to be more cautious and therefore to postpone its decision. The Bank responded that the process "is being followed closely by the financiers of the project. High-level DRC government officials have already indicated that no fundamental problems are expected to arise with the Tenke project. This confirms the conclusions of a report published by the UN in 2003 on the investigation of illegal natural resources exploitation in the DRC. The UN report was generally rather critical, but the companies involved in this project were classified as 'cleared, no further action required'. Of course the Bank fully respects the work of the commission set up to carry out the review of the mining licenses and will take appropriate actions, if needed, in light of the commission's conclusions."⁹² The Congolese commission that reviewed the contract published its findings in March 2008. The revision is very critical on many issues, including violations of several laws, but the commission only recommends a revision of the partnership with Gécamines⁹³. This, however, creates uncertainties for the promoter and the Bank.
- Three villages are located very close to the plant site: Mulumbu, Amoni and Kiboko. The total number of the Project Affected People is 1,660 individuals belonging to 391 households. Their inhabitants are mainly cultivators who work the surrounding fields.⁹⁴ The key problem is that in many circumstances, people did not receive the most basic support services when relocated and even many months later, including houses, proper sanitation, water, and access to sustainable livelihood options. Many people spoke with frustration about the lack of information on resettlement and of participation in resettlement planning and implementation. There are serious indications that the situation contributes to tensions among communities.

If addressed, many issues could have been resolved before the implementation of the promoter's activities. The promoter organised several public consultations from November 2005 to December 2006. However, the available Environmental and Social Impact Assessment (ESIA), Resettlement Action Plan and Issues Response Report lack information about the land rights of the affected people, their cultural properties and their religious and spiritual values and practices. The documents provide neither information about possible ethnic sensitivities and tensions between communities and groups nor very basic information about the economic activities of the people in the different communities. Other relevant basic data left out in the 2006 Resettlement Action Plan: the compensation procedures for each of the affected families, the local procedures to provide compensation and assistance, and the ability of resettlement people to sell their agriculture products. Also, the Resettlement Action Plan identifies that some plots with regard to agriculture land is unsustainable but a sustainable solution is not provided. There is also no assistance

planned for the people regarding the agriculture practices and a sustainable agriculture process. The processes do not comply with one of the fundamental international human rights conventions that has been signed and ratified by the Democratic Republic of Congo⁹⁵ and international good practices as set up by the Special Rapporteur on adequate housing⁹⁶.

The ESIA that has been discussed during the public consultation from November 2005 to December 2006 does not provide any information about the impact of the promotor's activities on the biodiversity. This includes the species in the proposed project site, the population-density of the species, the vulnerability of the species, the method and period of research (if any), and the impact of primary and secondary impacts. There was neither a concrete or publicly available Environmental Management Plan nor a scientifically funded and concrete prevention or protection measures made during the consultation periods. The available information in the EISA on geomorphology, geology and mineralogy is very basic. The report lacks data and statistics about the project's impact on hydrology, water quality and air quality. Consequently, the consulted public was not adequately informed about the project's impacts on the environment.

The consultant, Golder Associates, presented in March 2007 a more detailed ESIA to the promoter of the project and the Government of DRC but it was still incomplete, given that most of the baseline data was collected during an unacceptably short base line survey (from late 2005 to May 2006). Despite this, the EIB decided to approve a loan in July 2007, knowing that important scientific surveys were still under process. Consequently, the EIB approved a loan without the availability of basic environmental and social information, provided by neither the public nor the Bank.

95 The International Covenant on Economic, Social and Cultural Rights consists of the "right of everyone to an adequate standard of living for himself and his family, including adequate food and to be free from hunger." This includes the right to water. More information on this topic is available in Jan Cappelle, A Practical Guide about the International Human Rights Frameworks and how Business fits into it, IPIS, 13 March 2008.

96 The Special Rapporteur developed "Basic principles and guidelines on development-based evictions and displacement" and urges the governments and the international community to incorporate the provisions. While the principles and guidelines are not legally binding, "they are based on international human rights law." Paragraph 3 of the "Basic principles and guidelines on development-based evictions and displacement".





II. The Commission's approach on businesses' practices

EU approach towards business' activities

This Memorandum already made some references to European strategies, papers, programmes and actions with respect to its approach on business' activities. The Commission has initiated several other initiatives that are relevant in this regard. One of those is the renewed EU Sustainable Development Strategy. This Strategy is adopted by the European Council in 2006 and "sets out a single, coherent strategy on how the EU will more effectively live up to its long-standing commitment to meet the challenges of sustainable development."⁹⁷ The Strategy states that:

- The Commission and its Member States will engage in a dialogue with business and relevant stakeholders aiming at setting environmental and social performance targets for products and processes.⁹⁸ The 2008 progress report however indicated that this issue has received little attention both at EU and national level.⁹⁹
- Member States should support information campaigns with retailers and other organisations to promote sustainable products *inter alia* environmentally sound products.¹⁰⁰ Again, the 2008 progress report indicated that this issue received little attention, both at EU and national level.¹⁰¹

Another action relates to the Commission's support to corporate social responsibility (CSR). The Commission proposed in its Communication on "*Corporate Social Responsibility. A business contribution to sustainable development*"¹⁰² the setting up of an EU Multi-Stakeholder Forum on CSR with the aim to promote transparency and convergence of CSR practices and instruments through three approaches. One of the approaches is to bring together existing initiatives within the EU, intending to establish a common EU approach and guiding principles; including a basis for dialogue in international fora and with third countries. The Commission also proposed to explore areas where additional action is needed at European level. The Forum was launched on 16 October 2002 and on 24 June 2004 the report "European Multistakeholder Forum on CSR, Final results and Recommendations" was presented. The outcome is voluntary commitments to support initiatives which go beyond common regulatory and conventional requirements.

The Commission's view to support voluntary initiatives and to raise awareness and improve knowledge about CSR is laudable. The Commission's current proposals and work are however not enough. It "is a well-known fact that even among the leaders, certain weaknesses of voluntarism are evident. Companies do not necessarily recognize those rights on which they may have the greatest impact. And while the rights they do recognize typically draw on international instruments, the language is rarely identical. Some interpretations are so elastic that the standards lose meaning, making it difficult for the company itself, let alone the public, to assess performance against commitments."¹⁰³ The Commission has not responded on this issue. They should however respond in enacting a set of minimum binding rules that accept the concept of criminal or

97 Website DG Environment, viewed on 13 May 2008.

98 Review of the EU Sustainable Development Strategy – Renewed Strategy. 26 June 2006. Page 12.

99 Ecorys, Progress on EU Sustainable Development Strategy, Final Report. 29 February 2008.

100 Review of the EU Sustainable Development Strategy – Renewed Strategy. 26 June 2006. Page 13.

101 Ecorys, Progress on EU Sustainable Development Strategy, Final Report. 29 February 2008.

102 Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development, COM(2002)347 final. 2 July 2002.

103 Report of the SRS on the issue of human rights and transnational corporations and other business enterprises, "Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts", UN Doc. A/HRC/4/035. 9 February 2007.

104 Some countries also have binding rules related the concept of liability of legal persons who are authors of/or complicit to international crimes.

105 Website Commissioner for Environment. Viewed on 08 May 2008.

106 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Thematic Strategy on the Sustainable Use of Natural Resources, COM(2005)670, 21 December 2005. One of the actions is to set up a Data Centre for Natural Resources, to improve the quality of information in this area for the gathering and pooling of knowledge about resource use and impacts and related policy assessment. The Data Centre does not aim to monitor the management of natural resources globally and the impacts of the actions in the partner countries in order to promote a sustainable natural resources management.

107 Proposal for a Community Lisbon Programme 2008 – 2010, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM(2007) 804 final.

108 *Ibid.*

109 A background document to the consultation on the action plans on sustainable consumption and production and sustainable industrial policy.

administrative liability of legal persons. This in order to ensure that business enterprises who are authors of human rights violations and environmental pollutions and destructions abroad, or complicit to it, are sanctioned for these activities. Such rules should relate to actions that must be taken by companies to follow relevant legal standards, e.g. international law, national laws, and regulations. There are only a few legal protection mechanisms on the level of the Member States, namely to protect people against acts of/ or in complicity to international crimes and some other acts.¹⁰⁴

The Commission has also no binding rules, or even any guidelines that identify businesses' obligations in situations where a government is unwilling or unable to fulfil its international and national obligations. The risk is a race to the bottom in human rights.

The consumption of extractive resources in Europe

The "*Thematic Strategy on the Sustainable Use of Natural Resources*" was adopted in 2005 following the provisions of the 6th Environmental Action Programme. The Action Programme is one of the key policies from DG Environment and the objective can be described as: "ensuring that the consumption of resources and their associated impacts do not exceed the carrying capacity of the environment and breaking the linkages between economic growth and resource use."¹⁰⁵ The Strategy calls for a "coordinated approach, anticipating the need to shift to more sustainable use patterns, which can result in environmental and economic benefits in Europe and globally."¹⁰⁶

This Strategy is one of the key European papers that identifies the Commission's solution for the negative impact of natural resources exploitation globally at the level of consumption in Europe. The paper however does not identify the actors in the chain between production and consumption and the responsibilities of these actors in order to contribute to a sustainable natural resources supply chain. In fact, this information is key for a coordinated response.

The issue of sustainable consumption is also addressed in the European Sustainable Development Strategy and the Community Lisbon Programme for 2008-2010.¹⁰⁷ One of the overall objectives in the Sustainable Development Strategy is to promote sustainable consumption and production patterns. In this context the Commission is working out an EU Sustainable Consumption and production Action plan. The Action Plan will be presented in early 2008¹⁰⁸ and the options¹⁰⁹ that are most likely to be considered at the EU level are:

- The establishment of minimum requirements for products from entering the market;
- A product labelling system; and
- Promoting energy efficient.

This is a first step forward of putting binding rules on businesses activities in the sphere of sustainable natural resources management abroad. Unfortunately, the Plan is not yet approved. Again, the paper does not identify the actors in the chain between production and consumption and their responsibilities.

III. The Commission's approach on trade and development

The European Commission needs to anticipate the potential risk that its trade policy could hamper its objectives of promoting a sustainable natural resources management. It, therefore, envisages building synergies between the various policies and development objectives, including between the different policies and actions of EU Member States and the European Commission. The promotion of coherence has also been proposed in the Commission's renewed EU Sustainable Development Strategy (SDS). It includes the following objectives, targets and actions:

- Promote sustainable development in the context of the World Trade Organisation (WTO) negotiations, in accordance with the preamble to the Marrakech Agreement establishing the WTO, which sets sustainable development as one of its main objectives. The result is that explicit reference to the Doha Development Round of multilateral trade negotiations is expressed by only a handful of countries.¹¹⁰
- Include sustainable development concerns in all EU external policies, including the Common Foreign and Security Policy, inter alia by making it an objective of multilateral and bilateral development cooperation. The progress report on SDS does not provide any input on progress made in this field.¹¹¹
- The EU should be working together with its trading partners to improve environmental and social standards and should use the full potential of trade or cooperation agreements at regional or bilateral level to this end. The progress report on SDS does not provide any input on progress made in this field.¹¹²

Despite the SDS, the European Commission has taken no initiatives so far to integrate its development and sustainable development values and objectives in relation to trade by one of the major players in international trade and investment: Export Credit Agencies¹¹³ (ECAs). ECAs are a government department or a commercial institution administering an account for or on behalf of government, separate from the commercial business of the institution.

ECAs suffer from serious deficiencies. Only a few European based ECAs assess the compliance of the promotor's activities with the international human rights-, social- and environmental obligations of the host country.¹¹⁴ The majority of the ECAs lack monitoring procedures and fail to assess and address fundamental elements involving good governance, climate change, accountability and conflict sensitivity.

Consequently, European based ECAs could provide export credit support to activities of clients that hamper the overall development initiatives of the Commission in accordance with Article 177 of the Treaty establishing the European Community. One example is the Chad-Cameroon pipeline that was backed by the French ECA Coface. Still one year after the construction of the pipeline, displaced households of Chad complained about the precarious and bad state of reconstructed houses given to them in the context of resettlement, because

110 Ecorys, Progress on EU Sustainable Development Strategy, Final Report. 29 February 2008.

111 *Ibid.*

112 *Ibid.*

113 An export credit is in principle a financing arrangement which allows a foreign buyer of exported goods and/or services to defer payment over a period of time. Export credits are generally divided into short-term (usually under two years), medium-term (usually two to five years) and long-term (usually over five years). Export credits can be backed by official support meaning that government backed support is involved. Official support can take the form of direct credits/financing, refinancing, interest-rate support, aid financing (credits and grants), export credit insurance and guarantees. The activities of ECAs include giving insurance or guarantees for the repayment of a loan by a financial institution to a buyer in a third country (buyer credit), giving insurance or guarantees against non-repayment of a credit extended by an exporter to a buyer in a third country (supplier credit) and providing direct loans or credits to third country buyers. Website DG Trade, viewed on 15 May 2008.

114 Jan Cappelle, The environmental and social policies of Export Credit Agencies, An assessment, IPIS. September 2007.

115 Fondation Camerounaise pour une Action Rationalisée des Femmes sur l'Environnement, publication on the website www.eca-watch.org, 19 May 2005.

116 European Parliament resolution of 29 November 2007 on trade and climate change (2007/2003(INI)).

of the poor quality of materials used for construction.¹¹⁵ Also mentioned by the population was the increased cost living, difficulties in accessing their farms, and restrictions in available cultivatable land etc.

One aspect of sustainable resources management and trade has been discussed in the European Parliament very recently. The resolution of the European Parliament on Trade and Climate Change¹¹⁶ was passed on 29 November 2007 and calls for the discontinuation of public support, via export credit agencies and public investment banks, for fossil fuel projects and for redoubling of efforts to increase the transfer of renewable energy and energy efficient technologies. The Parliament also asked the Commission and Member States to propose legislative instruments to ensure that Member States export credit agencies and the EIB take into account all of the climate change implications of the funded projects when making or guaranteeing loans. They also recommended to impose a moratorium on funding until sufficient data was available, in accordance with advice from the Organization for Economic Cooperation and Development (OECD), the G8 and the Extractive Industries Review.

IV. Commission's policy on conflict resources in Sub-Saharan Africa

Natural resources wealth in various African countries has fuelled conflicts and even financed wars. The major challenge is finding effective and appropriate ways to address the causes of tension and violent conflict, and find appropriate measures of conflict resolution. This chapter looks at the European Commission's instruments for conflict prevention, treating the root causes of conflict and conflict resolution and linking it into the natural resource agenda.

Conflict prevention

This Memorandum already elaborated on the European approach to conflict prevention bilaterally. In practice, this means that when Country Strategy Papers and Indicative Programmes are prepared, risk factors are systematically checked. For that purpose, the Commission's geographical services are using conflict indicators. In relation to this, the Commission has developed a checklist for root causes of conflict/early-warning indicators. One of the issues assessed is "the possible internal or external conflict over natural resources."¹¹⁷ Countries receiving the highest scores at the end of the complete assessment "are drawn to the attention of the General Affairs and External Relations Council through a confidential 'watch list'. The watch list is a snapshot of one moment in time and is subject to constant revision."¹¹⁸ On the basis of this conflict analysis, "attention could then be drawn in the Country Strategy Papers to those underlying causes of conflict that external aid or other EU instruments should target."¹¹⁹ Additionally, the European Commission can take appropriate measures to force partner countries to respect and protect the fundamental elements in the Cotonou Agreement. There is, however, a serious gap between the European objectives and its concrete actions, as we explained earlier in chapter 2 of this Memorandum.

There are also many other initiatives that have been taken by the Commission. We elaborate on some major outcomes.

As reflected in the European Consensus on Development, "the European Community will continue to develop comprehensive plans for countries where there is a significant danger of conflict, which should cover policies that may exacerbate or reduce the risk of conflict."¹²⁰ One priority in this regard is to come to an integrated approach to conflict prevention and crisis management, as well as to other security threats. This has been argued in many other communications and strategies by the Commission, including the "Communication on conflict prevention" in 2001¹²¹ and the European Security Strategy. More recently, the Council "called for further intensified cooperation within and between Council bodies, Commission services and Member States, in particular by improving the sequencing in the strategic planning of their short term and longer-term actions."¹²² One of the suggested actions by the Council is to take into account the development dimension in the preparation of activities in the sphere of the Common Foreign and Security Policy (CFSP) and the

117 EU Programme for the Prevention of Violent Conflicts, page 4.

118 *Ibid.*

119 Website European Commission, External Relations, viewed on 19 May 2008.

120 The European Consensus on Development, page 27.

121 Communication from the Commission on Conflict Prevention, COM(2001) 211 final.

122 Council of the European Union, Conclusions of the Council and the Representatives of the Governments of the Member States meeting within the Council on Security and Development, 15097/07.



123 *Ibid.*

124 European Council, Presidency Conclusions. 14 December 2007.

125 EU Programme for the Prevention of Violent Conflicts, page 4.

126 European Commission, Directorate-General For External Relations, Supporting Peacebuilding, An Overview Of European Community Action. 1 July 2006.

127 The Kimberley Process Certification Scheme is implemented throughout the EU by a European Community Regulation (No 2368/2002) and adopted under Article 133 of the EC Treaty.

128 Council of the European Union, Presidency report to the European Council on EU activities in the framework of prevention, including implementation of the EU Programme for the Prevention of Violent Conflicts. 19 June 2007.

129 Report from the Commission to the Council and the European Parliament, Annual report from the European Commission on the Instrument for Stability in 2007, COM(2008) 446.

European Security and Defence Policy (ESDP), and taking into account security aspects, including the CFSP/ESDP dimension, in the preparation of development activities.¹²³ This process can be strengthened institutionally during the current revision of the Security Strategy and its implementation. The European Council aims “to examine the implementation of the Strategy with a view to proposing elements on how to improve the implementation and, as appropriate, elements to complement it, for adoption by the European Council in December 2008.”¹²⁴

Building on the 2001 Communication on conflict prevention, the Swedish Presidency launched the initiative of developing an EU “*Programme for the Prevention of Violent Conflicts*”. This Programme was adopted by the General Affairs Council on 11-12 June 2001 and endorsed by the European Council. The EU programme has a policy approach very similar to one of the Commission’s Communications. It puts forwards a number of guidelines for action in the CSFP/ESDP field. The Commission is currently implementing the recommendations contained in its Communication. One of the recommendations is the mainstreaming of conflict prevention in the European policies and instruments.¹²⁵

There are two main international initiatives in the field of natural resources and conflict prevention in which the Commission participates actively.¹²⁶ The Commission has taken a role in the Kimberley Process as Participant in the Kimberley Process Certification Scheme (representing all 25 EU Member States)¹²⁷, and was chair of the Kimberley Process in 2007. The other initiative that the Commission is active in relates to conflict timber and forest governance and is through the EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT).

Another European initiative that can be mentioned in the sphere of conflict prevention related to natural resources is the Rapid Reaction Mechanism (RRM), which serves to respond to natural disasters or to political crises in third countries. RRM-funded projects played an important role in a number of crisis response undertakings by the EU, in many cases kick-starting programmes under geographic instruments or dovetailing with CFSP/ESDP actions. The EU used this instrument in 2007 in providing assistance to the authorities of Ghana for devising and implementing an Action Plan and strengthening its internal controls to prevent conflict diamonds from being exported through Ghana. The strategy behind the action plan is to support the peace process in Côte d’Ivoire by cutting off revenues from the illicit export of diamonds through Ghana.¹²⁸ The Commission has launched the “*Instrument for Stability*” (IfS) in 2007, which replaces a long list of other regulations including the RRM, to enhance the Commission’s crisis response capacity. Thematically, the IfS can still support issues of conflict resources.¹²⁹

Sanctions and Restrictive Measures

Sanctions, restrictive measures on trade in natural resources and bringing about a change in activities or policies are also possible within the framework of the Common Foreign and Security Policy (CFSP). The European Union can apply these measures in pursuit of the specific objectives set out in Article 11 of the Treaty on European Union, namely:

- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;
- to strengthen the security of the Union in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter and the Helsinki Act, and the objectives of the Paris Charter, including those on external borders;

- to promote international cooperation; and
- to develop and consolidate democracy and the rule of law and respect for human rights and fundamental freedoms.

Those restrictions have to comply with the WTO Agreement, namely article XXI of the General Agreement on Tariffs and Trade (GATT) and Articles XIV bis and XX of the General Agreement on Trade in Services (GATS).¹³⁰

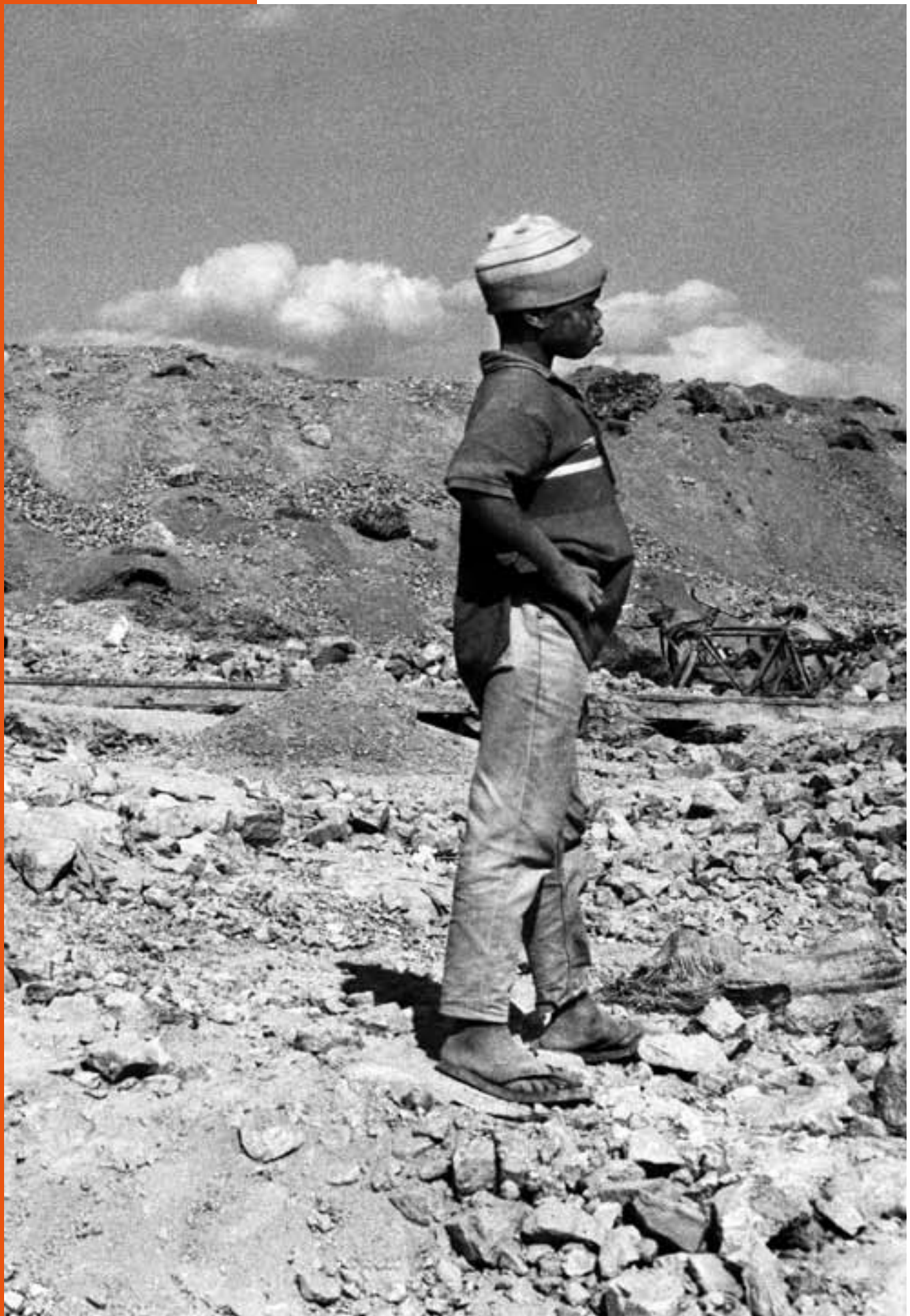
The EU has currently an import ban on diamonds from Côte d'Ivoire. It follows a decision by the UN Security Council that aims to prevent the illegal exploitation and trade of diamonds as a source of finance for purchases of arms and related material and activities.¹³¹ The Commission has, and had in many occasions, restrictive measures on arms and military material in place. Such a ban recognizes the linkage between the illegal exploitation of natural resources, illicit trade in such resources and the proliferation and trafficking of arms as one of the factors of fuelling and exacerbating conflicts. Examples of locations where such a ban is in place are: Democratic Republic of Congo (in force), Côte d'Ivoire (diamonds, in force¹³²), Liberia (diamond and timber products, repeal of ban in 2007) and Sierra Leone (diamonds)). The European measures followed decisions by the UN Security Council to adopt a resolution in this regard.

130 Article XXI of the GATT allows for import and export restrictions which are either applicable to arms and military equipment, or imposed in pursuance of obligations under the United Nations Charter for the maintenance of international peace and security. Article XIV bis of the GATS provides for a similar exception. Measures restricting trade which do not fall under these categories, have to meet the conditions laid down in Article XX of GATT and Article XIV of GATS, respectively, and, in some cases, could be incompatible with WTO rules.

131 Common Position 2007/761/CFSP.

132 A recent paper by BICC and FT concludes that more attention is needed to pre-assess alternative mechanisms to break the link between natural resources and conflict and how they could effectively be combined with other sanctions (in particular financial sanctions) against key actors of the conflict. BICC Focus: Conflict Diamonds and Peace Process in Côte d'Ivoire, Bonn International Centre for Conversions (BICC) and Fatal Transactions, June 2008.





Conclusions

The European Commission has placed sustainable development prominently on its agenda. Along with the other sectors, the Commission also holds the extractive industries sector accountable in achieving such development. Moreover, it considers the concept of transparency, good governance, the promotion of human rights, energy efficiency and sustainability as important to the exploitation of natural resources.

Since the European Consensus, the Commission has introduced these objectives in the sphere of natural resources management in many different papers and programmes. As a consequence of the basic structure of the European Union, we see some problems with the different pillars and decision-making procedures between those. Such a structure creates, as has been outlined in this Memorandum, a situation of fragmented policy formulations in the sphere of promoting a sustainable natural resources management. The resulting policy then neither constitutes a whole nor consistent and comprehensive implementation.

A serious problem therefore is that the majority of the commitments are not translated into practice. The Commission repeatedly voices its concern on natural resources conflict sensitivity, unsustainable natural resources management and underdevelopment, but does not entail a sound strategy when its objectives are not implemented. And where actions (directly or indirectly) in the sphere of natural resources management are planned, third-party evaluation is made difficult due to a lack of public dissemination of the information.

The focus of the Commission on promoting natural resources management is on governmental responsibilities: good governance, anti-corruption measures, promotion of human rights and fundamental freedoms. The views are, however, not always consistent with the ones of international bodies such as the United Nations. The European Commission also fails to identify the liability of the European extractive industries and the private financial sector. But the Commission can influence the behaviour of companies in various ways, namely through raising awareness and expectations of corporate behaviour, through the use of its economic (e.g. EIB) power, supporting and harmonizing the EU's member states in enacting binding rules (e.g. on corporations and ECAs) and through raising awareness of the importance of sustainability at international institutional fora (e.g. WTO, OECD, UN).

It has already been said in the introduction of this Memorandum that there lies responsibilities with all actors in the supply chain and not only by those that are directly involved in the exploitation phase i.e. mining, quarrying, dredging, oil and gas extraction. Such a supply chain is long and complex, but can be divided in to two main sectors: first, the supply (from exploitation of the extracted metals, minerals and aggregates to mineral processing), trading, freight and logistics sector and, second, to the direct, intermediate and end-market consumer sector. The European Commission has an approach on different, but not all, aspects of the natural resources supply chain. The EU is a powerful engine for development and trade and should therefore continue to work towards a consistent and comprehensive approach on natural resources management.



Recommendations to the European Commission

133 United Nations Expert Group Meeting on Natural Resources and Conflict in Africa, Transforming a Peace Liability into a Peace Asset, Conference Report, 17-19 June 2006, Cairo, Egypt. Organized by the Office of the Special Adviser on Africa (OSAA) in cooperation with the Government of Egypt.

The United Nations Expert Group Meeting on “*Natural Resources and Conflict in Africa: Transforming a Peace Liability into a Peace Asset*” was held in Cairo, Egypt from 17 to 19 June 2006. The conference sought to create strategies on how to harness Africa’s natural resources for peace and development on the continent.¹³³ The recommendations generated at the meeting are still valid today. We, therefore, incorporate those, and formulate additional ones in order to connect the EU’s objectives to contribute to a process of natural resources exploitation as inherently good and as an engine for sustainable development.

On research and public dissemination:

The European Commission should:

- Ensure that there is more detailed and better information in the various European strategy papers, programs and action plans on the quantity, quality and value of natural resources in Africa, as well as their legal and illicit exploitation, the sustainability of the exploitation and the relation between natural resources and conflict. Those papers should also incorporate lessons learned about improving natural resource governance.
- Undertake additional research to generate the information needed to support sustainable natural resources management, including policy development and monitoring of compliance, and the link between natural resources exploitation and conflict.
- Collate and make existing information more accessible to the public. This can be done with setting up a public database with all available information on natural resources and the natural resources supply chain.

On Trade and Business’ Practices in natural resources management:

The European Commission should:

- Incorporate the endorsement to the EITI, transparency of access to natural resources, and the use of income of revenues from the extractive industries to governments as fundamental elements in the Country Strategy Papers and National Indicative Programmes of extractive resource-rich countries. Those elements should be cemented in the Cotonou Partnership Agreement or other legal agreements between the EU and its partner countries.
- Enforce the European Investment Bank and Export Credit Agencies to develop, implement and ensure independent monitoring of environmental, human rights and social safeguard policies. Those should be coherent with the EU’s and its Member States’ values and objectives in the protection and promotion of the rights of people as enshrined in fundamental international human rights treaties and labour rights conventions, and in international conventions and agreements to protect the biodiversity and environ-

ment. The process of developing these policies should be transparent and in consultation with civil society.

- Enforce the European Investment Bank and Export Credit Agencies to develop environmental, human rights and social indicators in order to benchmark promoter's businesses and ensure compliance with those during implementation of the activities. The process of developing indicators and monitoring should be transparent and in consultation with civil society.
- Develop and enact binding rules that accept the concept of criminal or administrative liability of legal persons in order to ensure that business enterprises, who are authors of human rights violations and environmental pollutions and destructions abroad, or complicit to it, are sanctioned for the activities. This relates to actions that must be taken by companies to follow relevant legal standards, e.g. international law, national laws, and regulations. This process shall be in consultation with civil society.
- Develop and enact binding rules that identify businesses' obligations in situations where a host government is unwilling or unable to fulfil its international and national obligations. This process should be in consultation with civil society.
- Enforce European-based companies to develop environmental, human rights and social reports, through a participatory and consultative process. Independent experts, the government, civil society and affected communities, should be involved in the process before the company begins operating its activities. The reports should incorporate internationally agreed environmental, human rights and social indicators, and should be made publicly available as well as verified by a third party.
- Enforce European-based companies to align all contracts with sub-contractors to the principal contract with the government. Also, ensure that subcontractors comply with the same standards, and eliminate the practice of secret clauses or stabilization clauses.
- Enforce European-based private financial institutions to develop environmental, human rights and social safeguard policies and indicators for application in its relevant business activities. The policies, indicators, and the portfolio applications should be developed through a consultative process with civil society and should be publicly available.
- Create obligatory transparency mechanisms for European-based companies in the sector. It is of vital importance that enterprises are required to report to not only the European Commission but also the consumer and other stakeholders regarding their support for the protection and promotion of human rights and for the preservation of the environment. Enterprises should also be required to note that they are not involved in or complicit to harmful effects on the environment and human rights. Such actions should relate to their activities and those of their suppliers. Such an approach requires to appoint an ombudsman for the sector. This position could guide and monitor the implementation of the identified activities of the enterprises. The ombudsman should have necessary powers to investigate and stop perceived abuses.
- Ensure that companies report on their selection of suppliers and on their purchasing processes with their suppliers. This approach requires the support and monitoring of an ombudsman for the sector.

On long-term strategy and programming on natural resources:

The European Commission should:

- Delineate a natural resources plan, natural resources governance strategies and policies that contribute to peace and sustainable development. This shall integrate the responsibilities of each actor, including the European Commission and Member States, and incorporate benchmarks and indicators to monitor the implementation. The plan should cover the complete



supply chain, from exploitation to end-user marketing. The responsibilities shall include promoting sustainable development in the context of the WTO negotiations and in international financial institutions, such as the World Bank Group.

- Establish mechanisms that ensure the integration of the responsibilities of all actors and that provide advice and support to them. This requires support to resources-rich countries to incorporate minimum standards for resource governance, including economic planning, development of legislation, and strengthening the capacity of enforcement structures such as the auditor, parliamentary oversight committees, the justice system, border controls and anti- corruption mechanisms.
- Provide special support to post-conflict countries in creating policies and mechanisms to manage their resource wealth and use it for post-conflict reconstruction and development.
- Enforce strong accountability mechanisms for European and African governments that violate international standards and norms related to resource governance, human rights, labour and the environment.

Recommendations to the European Parliament

On many occasions, the European Parliament and individual European parliamentarians voiced serious concerns about aspects of the European Commission's work in natural resources. They wanted to be certain that the EU was not only contributing to a process of sustainable natural resources exploitation in Africa but also responding accordingly to resource-related conflict prevention and resolution. The Parliament has responded by doing what it can within its powers however, they are limited.

One should note that the European Parliament cannot exercise formal scrutiny over various issues, such as the EDF. This inability of the Parliament can be seen as a democratic deficit. Considering this, there are many instruments in place in which the European Parliament can play a positive role. We identify some possibilities where the European Parliament should play a larger role and take action.

The European Parliament should:

- Adopt a resolution on sustainable natural resources management, taking into account the various issues raised in this Memorandum. The resolution should aim particularly at identifying the responsibilities of all actors in the natural resources supply chain, the need to enact appropriate rules and regulations, and call on the Commission to take an adequate approach within its sphere of influence.
- Continue to voice its support to and provide advice on the implementation of the various important elements of a sustainable program. It should also call on the Commission to integrate a comprehensive approach and to ask the Commission to present legislative proposals for laws.
- Continue to dispute, where necessary, the shortcomings of the European Commission's strategies and programmes in the sphere of contributing to a sustainable natural resources management abroad.
- Use its co decision power to introduce appropriate measures that enhance a sustainable natural resources management globally. The Parliament should investigate workable incentives, a process that requires a debate with all actors involved in the natural resources supply chain.
- Adopt a resolution on sustainable natural resources management, taking into account the various issues raised in this Memorandum.
- Call on the European Commission and the Council to take more action on investigations and report on conflict and mismanagement involving natural resources. It is also urged that the Commission should bring such issues to the attention of the partner country and other responsible actors in order to work towards a solution.
- To put strong emphasis in its *"Annual Reports on Human Rights in the World and the EU's policy"* on the effectiveness of the European Union in protecting and promoting human rights in order to contribute to a sustainable natural resource management.
- Use its consultation power with the Common Foreign and Security Policy (CFSP) to put emphasis on the integration of the sustainable development dimension in the preparation of activities in the sphere of the CFSP.



Abbreviations

ACP States:	African, Caribbean and Pacific States
CFSP:	Common Foreign and Security Policy
CSR:	Corporate Social Responsibility
EC:	European Commission
ECA:	Export Credit Agencies
EDF:	European Development Fund
EIB:	European Investment Bank
EITI:	Extractive Industry Transparency Initiative
ESDP:	European Security and Defence Policy
ESIA:	Environmental and Social Impact Assessment
EU:	European Union
FLEG:	Forest Law Enforcement Governance and Trade
GATS:	General Agreement on Trade in Services
GATT:	General Agreement on Tariffs and Trade
GDP:	Gross Domestic Product
GEEREF:	Global Energy Efficiency and Renewable Energy Fund
IF:	Investment Facility
IFC:	International Finance Corporation
IFS:	Instrument for Stability
ILO:	International Labour Organization
MDG:	Millennium Development Goals
OECD:	Organization for Economic Cooperation and Development
RRM:	Rapid Reaction Mechanism
SDS:	Sustainable Development Strategy
UN:	United Nations
WTO:	World Trade Organisation

Fatal Transactions consists of:



Bonn International Center for Conversion (BICC), Germany



IKV PAX Christi, The Netherlands



Netherlands Institute for Southern Africa (NiZA), Netherlands



Broederlijk Delen, Belgium



Wroclaw University, Poland



International Peace Information Service (IPIS), Belgium



Medico International, Germany



OxfamNovib, The Netherlands



Groundwork South Africa



Centre National d'Appui au Développement et à la Participation Populaire (CENADEP) DR Congo



Juventude Ecológica Angolana (Angola)



Colophon

Copyright by Fatal Transactions

This Memorandum is written by Jan Cappelle from IPIS (International Peace Information Service). IPIS is member of Fatal Transactions.

The pictures in this Memorandum are part of a series produced by Fatal Transactions in 2007. It shows the lives of mining communities in Katanga. Katanga is the largest mining province of the Democratic Republic of Congo.

Pictures: Colin Delfosse, Pauline Beugnies, Belgium, www.outoffocus.be

Design: Frank Langedijk, BNO, the Netherlands

Printed: De Raddraaier, the Netherlands

July 2008

Fatal Transactions
International Secretariat
P.O. Box 10707
1001 Es Amsterdam
The Netherlands

www.fataltransactions.org



