

## The role of natural resources in fragile states

Report of expert meeting held on 22<sup>nd</sup> of April 2009 in The Hague

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### Introduction by Nathalie Ankersmit (National Coordinator Fatal Transactions, Niza):

Natural resource governance is of major importance for the development of fragile states. Several fragile states are suffering from the resource curse. But resources could also be contributing to development and be an engine for economic growth and stability. However, extraction of natural resources often plays a disruptive role and can lead to conflict, increased corruption, non-transparent business deals and in the worst cases to permanent environmental degradation and serious human rights violations. The influence and position of different actors and stakeholders are crucial in this debate. Therefore the questions of this meeting are focused on: what are the responsibilities and possibilities of stakeholders that will help prevent the resource curse?

The chair, **Mr. Fulco van Deventer (Cordaid)**, explains the purpose of the meeting: To exchange information between participants, from the perspective of different stakeholders and come up with policy recommendations which are directly linked to the three topics of the afternoon: 1) resource curse, 2) due diligence and 3) transparency initiatives. These recommendations will be sent towards politicians.

### 1. Fragile States & natural resource curse

Presentation by **Ms. Bertine Kamphuis** (University of Amsterdam):

- When studying the effects of natural resource extraction in fragile states different disciplines (economics, social and political science and conflict studies) are to be considered. Diagnosing the curse is currently predominated by economics. It involves complex mechanisms and several levels (state, national, international). Policy recommendations for reversing the resource curse are based on disparate analyses from different social disciplines. An important question in the analysis is whether state fragility causes the resource curse or vice versa. The level of industrialisation and institutions are important to manage resources and possible conflicts. If conditions are absent it can cause instability.
- Most policy recommendations assume 'willing, but unable' resource exporting governments, neglecting the 'messy politics' of implementing economic measures and the expected resistance from various corners of the resource extraction network. Newcomer oil exporters are developing countries with weak governance. There is a tendency of the development path of exporting countries turning into 'rentier states'. Preconditions are not good so they risk becoming 'able but unwilling' states.
- A curse with no cure? There are some directions for a cure, but no easy ones:
  - i. Avoid single issue cures (risk of narrow vision and micro level)
  - ii. Do politics, not only technical capacity building

- iii. Take a regional if not global approach
- iv. Enter into selective engagement with China

*For more background information, please check: <http://www.thebrokeronline.eu/en/articles/A-curse-with-no-cure>*

Presentation by Mrs. **Celine Nenodji**, (GRAMPTC – NGO in Chad) on the current situation of oil extraction in Chad and the link to good governance:

- Natural resources are important to support the development but are also a risk for conflict and empowerment.
- Since 2001 GRAMPTC is monitoring the impact of extractive industries on Chad's population and environment
- The World Bank has withdrawn from an oil extraction project that started 5 years ago with an international consortium of companies (e.g. Esso) due to bad governance and management of revenues, but also political reasons were involved.
- Management of natural resources has to take into account:
  - i. Transparency and good governance; there is currently a blur of agreements and information and disrespect of contract agreements
  - ii. Transparency in oil revenues; some revenues are used to fund war
  - iii. A great part of the budget of Chad is spent on military and security (147 billion CFA). State has given no account for budget 2004-2008
  - iv. There is a new law on revenues that differs from the framework of the World Bank: 10% of revenues is not for future generations but can be used on defense and the security sector (which are secret and difficult to control)
  - v. NGOs appeal to the National Assembly not to vote in favour of this law
- Concluding: enormous challenges to strengthen the rights of population and protect environment. Mobilization on all levels is needed, as well as more transparency on revenues and good governance.

### **Discussion/Questions:**

The position of investors in Chad is explained. There is no official framework or incentive for sustainable investors. When the World Bank backed away from the project other investors came (from i.e. China) with no impact studies or environmental management taken into account. NGOs indicated that investments would fuel conflict and expressed concerns. Another argument of NGOs to be critical on the World Bank role was that no public money should be used to support commercial initiatives. The impact of resource extraction on food security in Chad is considerable. Exploitation has damaged land, land has been taken from its owners and oil revenues are not used to invest in food security.

On the recommendation of 'do politics, no capacity building' it was suggested that this might lead to lack of mechanisms or instruments that can be used for monitoring impact of natural resource extractions. These instruments are to be used politically in the end as well. It was argued that these measures can be counter productive if implementation is at the national level where government is in charge and standards are used as a 'cover up' (like the EITI in Nigeria). Besides, certification can make smuggling to neighbouring countries more attractive. Influencing the power balances outside of the state might change this, but the question is then: what do you want: development or stability? On the other hand, processes like Kimberley Process Certification System can work in strong states with good systems, but can include the risk of consolidating rentier states.

## **2. Due diligence procedures**

Presentation by Mrs. **Tineke Lambooy** (University of Utrecht and Nijenrode Business University) on the history, concept, performance of due diligence and finally, the term due diligence as part of corporate duty to respect human rights as has been referred to by Professor Ruggie (UN):

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- Due diligence comes from legal practice as defense against legal claims. It can be explained as: 'I've done my best to avoid misrepresentation, I have done research; done my homework'. Or: the standard to measure against is what other banks should have done (definition is referred to by prof. Ruggie on page 25)
- Due diligence is done in: public/capital market transactions, private transactions, operational agreements (e.g. exploration contracts).
- The purpose of due diligence investigation is to defend against claims, to research possible synergies or new opportunities in business and markets, to ascertain loans or to value operational agreements.
- Due diligence concerns a factual research into company affairs and factors that may impact the company's results; address any obstacles or hidden liabilities that come up (that could also concern human rights or corruption)
- Due diligence is a container concept and needs to be done by multidisciplinary teams of different experts. Due diligence investigations start early in the negotiation / transaction timeline and usually ends just before closing the deal. Ultimately, if the due diligence reveals too many problems, the investor can better cancel the deal.
- Ruggie's report: 'How do companies know that they respect human rights? Mostly there are no systems in place. Due diligence is required: a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it'
- Due diligence must therefore be: inductive and fact-based, whereby 3 sets of factors need to be considered: 1) country contexts: failed states, conflict, absence of rule of law, bad governance etc. 2) human rights impacts: existing policies, impact assessments, indicators etc. 3) possible contribution to abuse: track record of third party relationships
- With a common sense approach it will soon be clear whether an investment or transaction contributes to human rights abuses or not.
- Human rights due diligence can be done permanently or in new operational contracts with governments, 3<sup>rd</sup> parties etc.
- Other corporate responsibility tools that can be used when assessing human rights as part of due diligence are: human rights compliance assessment (by companies as Shell or NGO's: Aim for Human Rights), Global Compact: Human Rights Translated – A Business Reference Guide (Monash University), Business Leaders Initiative on Human Rights and GRI Reporting, OECD Guidelines – complaints – NCP, Company Codes of Conduct, Voluntary Principles, EITI, FSC – Kimberley Process, Contractual Obligations.
- Concluding:
  - i. Due diligence and human rights are an area in development
  - ii. There exists a lot of HRIA tools that are useful and can be used already
  - iii. A connection between company policies and sustainable reporting needs to be established
  - iv. Failed states/conflict zones imply either a proactive approach or stay away!

Co-reference by Mr. **Martijn van Dam** (Member of Dutch Parliament for Labor Party) on the political consequences of due diligence issues and resources trade for the Dutch foreign policy:

- In continuation on the last conclusion of Mrs. Lambooy: stay away in fragile states is no option. The role of natural resources in conflict situations is very important and it has two significant aspects: 1) human rights 2) dependency of western world/economy on resources.
- There is no doubt that the west contributes to human rights violations in fragile states or keeps certain regimes like Saudi Arabia in power because of the demand for natural resources. It is necessary to accept this and to discuss the role of human rights related to natural resources.
- The influence of countries like China and India is getting bigger, the battle for oil and gas is increasing and if we walk away they will take over with less interest in human rights issues and they won't interfere in national issues.

- Stay away means less influence, also because the economic power of the west is decreasing and restraining aid does not mean more influence. However the western countries are still seen as friendly and stable.
- Westerns consumers still have some power, public opinion is of influence. Together with political pressure this needs to be used to change human rights situations.
- An agenda is needed on:
  - i. More transparency in economic value chains, also for companies themselves to know where their resources are coming from and to inform the public on this. Companies should feel responsible for this
  - ii. The responsibility is to be transformed into a system of certification like e.g. Kimberley Process Certification System (can start voluntarily)
  - iii. Regulation is the last step: certification and control can diminish conflict, like the certification of diamonds in Zimbabwe: less war diamonds were exported, but still human right violations continue. Therefore a political dialogue with governments is essential!

#### **Discussion/Questions:**

On the timeframe of due diligence it was discussed when to step out. Due diligence should not be done at a fixed point in time only, a sustainable monitoring on company's reports within a continuous system is necessary. Also due diligence started out to be more about risks than opportunities, but along the road a lot of positive directions came up (like the Voluntary Principles) and they need to be included as well. A sector approach on this is the most feasible.

In the capital market there is legislation on due diligence, but is the issue of human rights (enough) included? If not, pressure of NGOs to put the topic higher on the agenda is required. For the private market there is no legal way, but investigation, pressure by social organizations / NGOs and NCPs can have influence. Also best practices or CSR instruments that are already in place can be used to take the discussion one step further.

When is the best moment to abstain fragile states? Some clear examples are given where abstinence would be the best choice because investing means supporting human rights violations: Sudan, Burma. But by being present also influence can be practiced. Abstaining is context specific, no general policy level can be defined for this.

Individual companies do have their own responsibility, either in buying resources directly (like Total) or indirectly (like Nokia). Here the transparency in the value chain needs to be built up and consumer pressure is needed. Transparency of recourses is possible; ingredients can be traced if they are regulated.

Political will to change the 'curse' of natural resources is only observable when incidents/conflicts are reported. With less attention the political will disappears. The role of the western companies is decreasing, Chinese take over without any political debate. It is of utmost importance that a common policy is made on trade and human rights, this means with both ministries of foreign affairs and economical affairs.

### **3. Transparency initiatives: Publish What You Pay (PWYP) and Extractive Industry Transparency Initiative (EITI)**

Presentation by Mr. **Geert Geut** (Ministry of Foreign Affairs) on the Dutch position within in the EITI:

- Explanation of EITI is given: a county led (19), voluntarily international and independent validation system, comparing flows of money (revenues) and seek to what governments account for in their books.

- The Netherlands is a supporting country member and contributes \$ 250.000 to the secretariat and \$ 1.250.000 to the multi donor trust fund over 4 years. Discussion is held on whether the Netherlands should become an implementing country (pressure from OECD).
- Challenges for EITI:
  - i. In 2010 is the deadline for countries to comply with EITI, only one country so far has reached: Azerbaijan
  - ii. Politicization of the EITI process: countries themselves can define the scope of EITI e.g. which resources or regions are within the EITI and which not
  - iii. Rules of EITI need to be followed, e.g. 20% of GDP is requisite for natural resources
  - iv. EITI should not be used as a political platform of individual countries
  - v. Supporting countries need to become implementing countries as well

Co-reference by Mrs. **Radhika Sarin** (PWYP - London) on the EITI in general and more specifically on the views of civil society as one of the stakeholders within the EITI:

- Clearness in revenues is first step, but not enough. Also transparency in budget making and monitoring is needed to ensure real sustainability.
- Role of CSOs in EITI: ground level (in local multi stakeholder groups), international level (representatives on international boards), CSOs as watch dogs identifying challenges and raising issues
- Engagement of CSO in EITI on all levels is necessary and need not to be restricted by interference of governments because this undermines EITI and closes the debate.
- EITI can bring long-term capacity building for NGOs and in fragile states it can build a bridge for dialogue.
- Concluding:
  - i. EITI is stimulating discussion and gives information on the resource value chain
  - ii. EITI supports accountability building (also in fragile states)
  - iii. EITI is under pressure because of the 2010 deadline and the signing up of the countries: other mandatory disclosure measures are needed
  - iv. Exclusion of CSOs in the process is actually happening
  - v. Access to information on contracts/resources/allocation of budgets and revenues for CSOs is improved by EITI but follow up is needed

#### **Discussion/Questions:**

On the initiatives for validating EITI in the DRC it is said that the informal sector has to be involved. Without a minimal level of good governance (as is the case in fragile states like DRC) no EITI can be validated. In DRC EITI is limited to 2 regions, which is still better than nothing. But it also has to be seen as an (negative) exception because of the magnitude and size of the country. But it is an ongoing discussion in the EITI board.

The reason that the Netherlands are not an EITI member is simply because they never thought about it. It is so to say: invented by the rich, implemented by the poor. Reasons for countries to not become a member might be:

- Mineral resources play a small part of the economy
- CSOs involved in this are not present
- It is too complicated: federal government is responsible for a lot of resources extractions, while EITI is at national level
- Denial of problems when country is already EITI complied

EITI should become obligatory. It could for example become a requisite for obtaining loans at the WB / IMF, could be the next step.

Supporting countries could assist countries like Chad to meet the EITI, but this is probably already done through the MDTF and WB. After 2010 countries will be de-listed from the procedure for validation and cannot enter for another 2 years.

The difficulty in the process with the multi-stakeholders is to involve the private sector. There is also a lack of capacity for multi stakeholder groups at local levels. It needs to be defined how they can become more effective and functional. Also the quality of the reports as well as the participation of NGOs can be improved.

#### 4. Recommendations

From the given presentations and interventions of all participants during the discussion the following recommendations can be given:

In order to reverse the resource curse in fragile states:

1. Do politics, not only technical capacity building and put forward the transparency and accountability on human rights within the natural resource extraction
2. Apply a regional, if not global, approach involving regional organizations
3. Due diligence is not a 'rocket science'; with common sense already a lot can be done: focus should not only be on risk avoidance but on constructive practical solutions and alternatives (win – win solutions)
4. Avoid false solutions: certification should not be a cover-up method amongst peers but needs to be effective and monitored and not only serve as PR of companies
5. EITI should not only measure or be an instrument; the other processes like global standard reporting on capital markets should be involved
6. OECD-countries should be urged to become implementing countries of EITI

In addition to the above:

- A process of policy coherence is essential and should have a proper place on the Dutch and EU agenda. Reaching of MDGs should be directly related to trade policy issues, the diverging interests of the ministry of foreign affairs and economical affairs should be put on the table.
- There is a focus on production within the natural resource discussion but the phases before production (exploration and exploitation) are to be taken into account. CSO involvement in this stage is already needed as environmental consequences, land issues, budget controls are all related to concessions and exploitation.
- Best practices and existing tools are available and the focus should be on them.
- The responsibility of different actors (state, business/companies/NGOs) should become clear and put in line.
- In fragile contexts, some mechanisms for NGOs to act and perform safely should be put in place by including them in the political dialogue with the governments of these countries. This is a role for western actors.

#### 5. Prospect of this meeting:

The interest for the debate on natural resources is large. Therefore the meeting is already a result by itself. A report will be written and distributed. There are plans to organize an international conference in November by Niza/Fatal Transactions and Cordaid, with a more EU perspective included and to broaden the network of interested actors and participants, and hopefully more from the corporate sector as well.

The chair expresses thanks to all participants and closes the meeting.