

Global Witness submission to the Public Consultation on the Future European Union Evaluation of Anti-corruption Efforts

[Global Witness](#) is a London-based non-governmental organisation that investigates the links between natural resources, conflict and corruption. We aim to promote improved governance, transparency and accountability in the management of the natural resource sector to ensure that revenues from these resources are used for peaceful and sustainable development rather than to fuel conflicts, corruption and state looting.

Our investigations and campaigning were a key catalyst in the creation of the [Kimberley Process](#), which addresses the trade in conflict diamonds, and the [Extractive Industries Transparency Initiative \(EITI\)](#), which promotes transparency in the payment of natural resource revenues by companies and their receipt by governments. We were co-nominated for the 2003 Nobel Peace Prize for our work on conflict diamonds and awarded the 2007 Commitment to Development Ideas in Action Award, sponsored jointly by the Washington DC-based Centre for Global Development and Foreign Policy magazine.

Although the consultation refers specifically to the introduction of an EU evaluation of Anti-corruption efforts, Global Witness believes that this consultation provides the opportunity to look at a range of anti-corruption efforts, beyond judicial processes, to tackle corruption both inside and outside the EU. As this submission will show, EU countries and the companies and banks they regulate play a crucial role in facilitating corruption abroad particularly in developing countries. Tackling the EU's facilitation of foreign corruption therefore helps to reduce instability, volatility and poor governance, and avoids undermining the impact of overseas aid including from the EU. An additional benefit for the EU is the creation of more stable investment climates for European investors and better access to raw materials, which is recognized in the EU's Raw Materials Initiative. Many of the same

The Stockholm Programme and Communiqué On a Comprehensive EU Policy Against Corruption call for a comprehensive anti-corruption policy, greater transparency over beneficial ownership of corporate vehicles, and the more effective use of aid to tackle corruption and promote good governance. We hope that these commitments will be recognized as part of this current process and that the EU institutions will work together to create a truly comprehensive anti-corruption strategy.

Question 1.

Global Witness supports any process, such as a reporting mechanism, which will help to harmonise anti-corruption measures across EU member states. Global Witness believes that the European Union should develop a comprehensive anti-corruption strategy, as stated in the Communiqué. This strategy should go beyond legal co-operation and enforcement and include preventative measures against corruption, such as ensuring transparency of the beneficial ownership of companies and the flow of revenues to states

as well as effective action against the laundering of the proceeds of corruption by financial institutions. These preventative measures should be included in a future reporting mechanism

A comprehensive EU anti-corruption strategy would ensure the spread of best practice across member states on these issues while also ensuring parity in any reporting requirements on companies. The European Union provides a platform for collective action which would also encourage unilateral action by member states.

Global Witness has a number of recommendations for a comprehensive EU anti-corruption strategy which are set out in our responses to Question 2. The implementation of these recommendations will bring about real benefits for the European Union and its member states, but also for countries outside the European Union (particularly in the developing world) whose stability and prosperity is in the European Union's own interest, but which suffer entrenched poverty and instability as a result of corruption which may be facilitated by companies and banks within the EU's jurisdiction.

Global Witness recognises that the United Nations Convention Against Corruption (UNCAC) has now introduced a monitoring mechanism, which we welcome. However the mechanism is weak and risks being undermined further at upcoming meetings. The UNCAC monitors individual countries' progress towards the terms of the treaty but it does not provide a strong platform for collective action. This is where a harmonised EU anti-corruption policy and evaluation process adds real value.

Question 2

Global Witness believes that whilst current EU anti-corruption commitments are welcome, they are too focussed on judicial measures and do not go far enough to have a significant impact on tackling corruption either inside the EU or beyond its borders. We believe that the development of a comprehensive anti-corruption strategy is an opportunity to introduce a range of anti-corruption measures which will have real preventative impacts and effectively build on existing commitments such as the UNCAC.

We have addressed the three suggestions outlined in the questionnaire, And then made a series of suggestions for other measures which should be included as part of this policy.

A legal initiative

Whilst we support the suggestion of a legal initiative to harmonise penal law, we believe it is important to draw a distinction between bribery and corruption, the former is only one manifestation of the later. Corruption can include a host of other activities beyond bribery, including embezzlement and influence peddling, and the two terms should not be used interchangeably. This legal initiative should also be used to look at how to prevent corrupt officials from governments outside the European Union from moving their corruptly obtained funds, or spending them, within EU borders. (See later points for more detail)

Financial support for awareness raising campaigns

Any support for civil society and citizens to enable them to identify and report corruption where it occurs, without fears for their safety, would be welcomed by Global Witness. It is also important to demonstrate to EU citizens the damaging effects that corruption may have (for example, in wasting EU funds), effects which can become devastating in developing countries which are also key aid and trade partners of the European Union.

Developing better tools to gather data on corruption across the European Union

Global Witness would welcome the collection of data on corruption across the European Union. This should include information on prosecutions of companies for foreign bribery cases both inside and outside the European Union, as well as legal cases for the recovery of corruptly-obtained assets and on Suspicious Activity Reports (SARs) filed by banks. This should include a breakdown of how many are related to corruption, and how many resulted in investigation and prosecution. Banks themselves have called for more information on how SARs are treated and used.

The need for a comprehensive EU anti-corruption strategy

Further to the three initiatives outlined above, Global Witness has a number of recommendations for inclusion in a comprehensive anti-corruption strategy, which are based on our 15 years of extensive investigations into high-level corruption in the natural resource sector around the world.¹

Our research has shown that companies, banks and governments inside the European Union can facilitate and fuel corruption outside EU borders in a number of ways:

- Companies can actively fuel corruption by paying bribes, or passively fuel it by failing to disclose the legitimate revenue payments they make to governments.
- Banks can sustain corruption by doing business with corrupt government officials and laundering looted funds or bribes.
- Financial secrecy jurisdictions (including those with close links to EU countries), and the financial and legal service providers who operate in them, can help the corrupt to hide their ill-gotten assets. They can also facilitate large-scale tax avoidance through transfer mispricing that denies revenues to developing countries that receive EU aid, as well as to EU countries themselves.
- Donors can inadvertently allow the corrupt to maintain power in developing countries by providing aid funds in a manner which allow these countries' governments to maintain basic services to their people while systematically looting their own public funds.
- Donors can also inadvertently facilitate corruption by failing to clearly tackle it effectively in such countries, and by failing to hold corrupt elites in these countries to account for their actions.
- Governments can contribute to corruption by failing to regulate their companies and banks, or by promoting business interests over concerns over corruption, as in

¹ See www.globalwitness.org for further information

the case of export credit guarantees to businesses known to have been involved in corruption.

The European Union can play a vital and proactive role by addressing all these problems, which will not only help to tackle corruption within the European Union but also help to curb it in countries which are vital trade and diplomatic partners, thus helping these countries to prosper and become more stable, as sources of raw materials to EU economies and as markets for EU companies. Greater transparency in the financial sector would help to tackle the problem of money laundering by terrorists and organized crime as well as by foreign corrupt officials.

A comprehensive anti-corruption strategy, along the lines we recommend, would help to:

- Create a level playing field for EU companies at home and abroad, in which sales and contracts are won through an open market rather than through bribery.
- Reinforce stability and the rule of law in developing countries, thus creating greater security for the contracts held by EU companies in these countries.
- Reduce the cost of doing business through eliminating the 'bribery premium' in contracts.
- Create a more stable and secure environment for EU companies and investors abroad, thus curbing the risks they face and reducing the cost of capital, insurance premiums and other operational costs.
- Increase value for money in aid and development spending.
- Help to reinforce international norms against corruption in a way which would ultimately place pressure on EU companies' foreign competitors to raise their own standards.

The contents of a comprehensive anti-corruption strategy

The EU should design and adopt a comprehensive anti-corruption strategy, including a reporting mechanism for member states and EU institutions, that ensures a zero tolerance stance towards corruption and ensures effective mechanisms for cooperation between different Directorates-General. This strategy should tackle all of the areas identified in the anti-corruption communiqué, including but not limited to 'tax deductibility, blacklisting regarding public procurement procedures, money laundering and external aid and assistance.'

This strategy should cover the different ways that governments, companies and banks can contribute to corruption and adopt strategies to mitigate these risks. The strategy should also ensure that the European Union's policies, or those of the member states, do not contradict or undermine one another.

EU member states should implement all commitments in the United Nations Convention Against Corruption (UNCAC), including cooperation between member states to prevent

and detect corruption and to return the proceeds of corruption to the country from which they came.

The European Union should set specific targets, based on the recommendations in this paper, against which progress should be monitored using the proposed EU evaluation of anti-corruption efforts. These reports should be publicly available.

Global Witness believes that the following areas should be included in a comprehensive anti-corruption strategy. Many of them are equally relevant to EU and non-EU countries.

1. Tackling illegitimate payments: Bribery of foreign public officials

Bribery is the most obvious and best recognised form of corruption. Bribery is not a victimless crime, nor a regrettable but unavoidable cost of doing business abroad. Bribery undermines the rule of law and the principle of fair competition and entrenches bad governance. Bribery of public officials results in government revenue, which could be used for development, being wasted on unnecessary and poor quality procurement projects, posing a risk to health and even life where essential services are affected.

Recommendations

- 1.1. The European Union should support the OECD Anti-bribery convention and ensure that EU member states introduce strict new anti-bribery legislation similar to that recently introduced via the UK Bribery Act 2010.
- 1.2. The European Union should go further and monitor member states' implementation of their legislation to ensure that it provides a successful deterrent against bribery by companies. This should include the monitoring of resources made available by each member state and the extent to which cases of bribery are effectively resolved.
- 1.3. Ensure that EU member states actively and effectively enforce Article 45 of the EU Procurement Directive. (See Rec 6.1 for fuller context)

2. Tackling a lack of transparency in legitimate revenue payments by companies

A lack of transparency in payments by companies to foreign states, often for natural resources, allows corrupt leaders and officials to personally enrich themselves by siphoning off legitimate payments made for those resources by international companies. Without transparency over how much companies are paying to foreign governments, the people and parliaments of resource-rich countries are unable to hold their governments to account. The lack of payment disclosure by companies facilitates an opaque environment in which high level corruption can take place on a grand scale, robbing countries and citizens of much needed revenue. This opacity and associated corruption also exposes foreign companies to greater investment and operational risk that ultimately disadvantages shareholders and jeopardizes security of supply of vital resources in unstable regions of the world.

The European Commission and several EU member states are supporters of the Extractive Industries Transparency Initiative (EITI), of which Global Witness is currently an alternate Board member. This support is highly welcome, but the EITI itself is not a sufficient solution to the need for resource revenue transparency because its voluntary nature means that governments with serious corruption problems, in countries where greater transparency is in the European Union's political and commercial interests, can simply opt not to join. The EITI is dependent on the continuing support of donors, and the consensus-based nature of its rule-making – though it protects the inclusiveness of the initiative – can also mean that decisions are open to contingency and political influence. For these reasons, the EITI is necessary but not sufficient as a solution to the problem.

The US recently passed legislation as part of the Frank-Dodd Financial Reform Bill which will require every extractive company regulated with the U.S. Securities and Exchange Commission (SEC) to disclose all payments made to foreign governments on a country-by-country basis. This will include EU-based companies regulated by the SEC. Such transparency will not only reduce opportunities for embezzlement but also help shelter companies from the costs of bribery and corruption by creating a more level and transparent playing field for them to operate on.

The European Commission is currently conducting a review into the benefits of introducing a similar requirement via the EU Transparency Directive or to go further and require mandatory country-by-country reporting for companies in all sectors of the economy. This would affect EU companies and foreign companies listed on EU stock exchanges. Full country-by-country reporting would have the two benefits. Firstly it would help tackle the embezzlement of legitimate payments by corrupt government officials. Secondly it would put information in the public sphere which would allow countries to clamp down on large scale corporate tax avoidance via transfer mispricing which robs both the developed and developing world of much needed revenue. This change would lead the way globally and secure much needed revenue for countries currently reeling from the global financial crisis both inside and outside the European Union and provide an alternative to painful public sector cuts.

Recommendation

2.1 Global Witness strongly encourages the EU to introduce this kind of mandatory country-by-country reporting as soon as possible and to ensure member states' compliance. This kind of legislation should include EU-based companies, their subsidiaries and joint ventures. At a very minimum the EU should introduce legislation similar to that past in section 1504 of the Dodd-Frank Financial Reform Act in the states. The EU should also use its significant political clout to pressure the International Accounting Standards Board to introduce this requirement as one of its standards so that it would be adopted internationally. The EU should not wait for action from the IASB

which is not democratically accountable and is slow to act. Rather the EU should lead the way and bring the IASB with it, ensuring a global standard.²

3. Tackling a lack of transparency in the allocation of licences and contracts

A comprehensive anti-corruption strategy should also ensure that the European Union uses the influence conferred by its diplomatic, trade and aid relationships with foreign countries to promote transparency in the allocation of licences and contracts to all companies, including those from the European Union.

The risk of corruption is particularly severe in the allocation of oil, gas and mining exploitation rights in developing countries (for example, in sub-Saharan Africa), where EU-based natural resource companies face growing competition from companies from other regions, not just from the Americas but increasingly from China and other Asian economies.

Recommendation

- 3.1 To avoid the risk of a "race to the bottom" in which EU-based companies feel compelled to engage in illegal acts of bribery or condone other forms of corruption in foreign countries in order to secure access to their natural resources, the EU should use its aid programmes, trade and partnership agreements and its influence in international fora to press for an international standard of transparency and open bidding for licences and contracts in the extractive sector and other key sectors where corruption is a serious risk.

4. Tackling illicit and harmful financial flows:

a) Money laundering laws are failing to prevent banks sustaining corruption by accepting dirty money

Just as a bribe cannot be taken without a company willing to pay it, large scale corruption cannot take place without a financial institution willing to accept or process the money. The scale of theft involved in state looting requires the involvement of the financial system.

For example payments are made from the bank account of a state oil company to that of a company owned by a government minister; from the account of a company's 'fixer' to that of a state official; from one of the accounts of a public official to another of his accounts in a different jurisdiction. It requires a bank to accept corrupt persons and their associates as their customers and then process the payments to divert bribes or stolen

² The question of country by country reporting as an accounting standard appears under both section 2, 'Tackling a lack of transparency in legitimate revenue payments by companies' as well as in this tax section, since it offers a significant solution to both problems.

public money into the accounts of individuals, or the companies that they own. Otherwise these illicit transactions could not take place. Combating the role of financial institutions in the flow of illicit money is therefore absolutely intrinsic to tackling corruption. So too is combating the role of those who set up and audit the corporate vehicles behind which individuals and legal persons hide, and which are still not properly regulated.

Banks and other institutions are required by international anti-money laundering regulations to identify their customer and the source of funds, and to file a suspicious activity report if they suspect the money is illegally earned. However, weaknesses in the anti-money laundering regulations, particularly in relation to due diligence on Politically Exposed Persons (PEPs),³ deficiencies in regulation and enforcement both onshore and offshore, as well as the opportunities to hide ownership from funds offered both in secrecy jurisdictions and major financial centres, increases the risk of EU institutions continuing to do business with the corrupt. Global Witness has shown how banks in the EU have continued to do business with corrupt government officials from countries such as Nigeria, Turkmenistan and Equatorial Guinea.

b) A lack of transparency in the ownership and operation of companies is facilitating corruption, tax evasion and avoidance

Increased transparency in company ownership and transactions is key to tackling corruption, since corrupt officials will often hide their looted money behind a shell company. However, it also has the knock-on effect of tackling the twin problems of (a) tax evasion and avoidance which are estimated to cost the developing world US\$160 billion a year, more than one and a half times the total global aid budget to developing countries, and (b) the limited ability of EU countries to raise a fair amount of tax revenue from multi-national (MNCs) corporations.⁴

Approximately 60% of global trade is conducted within multinational corporations, between subsidiaries of a parent company.⁵ This allows companies to use intra-group transactions to disguise profits in order to avoid tax liabilities. This is possible due to the current level of opacity afforded by the current regulatory structures and secrecy laws.

The International Accounting Standards Board (IASB) is currently developing a new standard for the extractives sector. It is considering whether this should include a requirement for oil, gas and mining companies to publicly disclose tax and other payments to governments on a country-by-country basis. This would help curb tax evasion and embezzlement of revenue. As mentioned under point 2 the EC is currently producing a report on the merits of introducing country-by-country reporting for *all* sectors at an EU level. This kind of leadership would help introduce a global standard, therefore Global Witness strongly supports the introduction of country-by-country reporting.

³ PEPs can be defined as persons who perform important public functions for a state.

⁴ Death and Taxes: the True Toll of Tax Dodging, Christian Aid, May 2008.

<http://www.christianaid.org.uk/images/deathandtaxes.pdf>

⁵ Ibid; J Neighbour, 'Transfer pricing: keeping it at arm's length', OECD Observer, January 2002, www.oecdobserver.org/news/fullstory.php/aid/670/Transfer_p

Recommendations

4.1. EU member states should be required to strengthen regulations to explicitly require institutions, including banks, to identify that the source of funds being deposited by Politically Exposed Persons (PEPs, e.g. senior foreign public officials) that present a high corruption risk is legitimate. This should be monitored by the proposed EU evaluation mechanism.

4.2. The EU should use its role in the Financial Action Task Force (FATF) to ensure:

- i. that tackling the proceeds of corruption is a priority;
- ii. that the FATF uses the current review of its standards to close the loopholes in its global anti-money laundering standard;
- iii. that FATF develops a methodology for assessing enforcement of anti-money laundering laws in its mutual evaluations of its members, not just that they are in place;
- iv. and that FATF uses its mutual evaluations to pressure members sufficiently to ensure not only that they have regulations in place meeting FATF's standards, but that these regulations are implemented and enforced. Such pressure should be applied, where necessary, equally to FATF's core OECD members as to its regional members.

4.3. The EU should use the proposed evaluation mechanism to ensure that EU member states take a lead in setting the highest possible standard for tackling corrupt flows of money as well as terrorist finance and criminal proceeds.

4.4. Corrupt politicians can hide behind a web of tax havens, corporate vehicles and trusts. The only way to ensure that these are not abused is transparency over ownership and control of corporate and legal entities. The EU should push for the FATF standard (recs 33 and 34)⁶ to be amended to require that every jurisdiction should publish an online registry of the beneficial ownership and control of companies and trusts. This is set out in the Stockholm Programme which states that the European Commission should '*with a view to preventing financial crime, consider measures to facilitate identification of beneficial owners behind assets and increase transparency of legal persons and legal arrangements.*' The recent Communication from the Commission on 'The EU Internal Security Strategy in action: Five steps towards a more secure Europe' also calls for the EU 'to consider by 2013, in the light of discussions with its international partners in the Financial Action Task Force, revising the EU Anti-Money Laundering legislation to enhance the transparency of legal persons and legal arrangements.'⁷

⁶ The current recommendations do not go far enough in ensuring transparency over beneficial ownership of companies and trusts, see: http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236920_1_1_1_1_1_1_1,00.html

⁷ COM(2010) 673, page 5

4.5. The EU should spearhead a multilateral agreement for information exchange between tax authorities including developing countries. This should be done with the ultimate aim of enshrining automatic exchange of beneficial ownership information as the international standard for information exchange. This would help struggling EU member states collect much needed tax revenue as well as developing countries who lose out the most. As a first step the EU should extend the Savings Tax Directive to cover not only individuals but companies and trusts, including a recognition that trustees are paying agents with a reporting requirement to the authorities about disbursements made.

4.6. The EU should push for international accounting standards to require all multinational corporations to publicly report sales, profits and taxes paid at country level in all the jurisdictions where they operate. This information should appear in their audited annual reports and tax returns. The EU should lead the way by introducing this requirement at an EU level.

5. Loans that fuel or subsidise corruption

There is a risk that in countries where corruption is prevalent, loans to governments or state agencies (including state owned companies) may be misappropriated or used to fill holes in the public finances that have been created by corruption. This can leave current and future generations of citizens to repay a debt from which they have derived no public benefit. There are many examples where debt obligations currently crippling developing countries originate from loans that were corruptly used; greater transparency would help to curtail this source of corruption.⁸

Recommendations

5.1. The EU should lead in the establishment of an international standard requiring commercial banks to publish key details of their loans to sovereign governments and state owned companies, including the amount, pricing and duration of the loan. This information should be provided with plenty of time to allow democratic scrutiny of the deal.

5.2. The EU should require lenders to governments and state owned companies to verify, and publicly confirm to their shareholders, that these funds are not being misappropriated or used to replace misappropriated public funds.

6. European Union member states and institutions overlook corruption when promoting business

EU member states and institutions can contribute indirectly to corruption by providing financial backing and diplomatic assistance to companies or ventures which are, or who

⁸ Global Witness, A time for Transparency, March 2004, P.40, 41, http://www.globalwitness.org/media_library_detail.php/115/en/time_for_transparency

have been, involved in corruption. The EU should take precautions, and put in place regulations, to ensure that EU member states and institutions do not prop up corruption through their trading agreements or financial or diplomatic backing for commercial interests.

As is set out in the Stockholm programme the EU should ‘promote the rule of law and human rights, good governance, fight against corruption, the civil law dimension, promote security and stability and create a safe and solid environment for business, trade and investment’. This approach should form the core of the EU’s trade, foreign and development policies as set out in the recommendations below.

Recommendations

- 6.1** The EU should rigorously enforce the letter and spirit of Article 45 of the EU Procurement Directive and ensure that EU member states ban companies found convicted of bribery from public contracts for a period of 5 years. The EU should monitor compliance with this directive as part of the proposed evaluation mechanism.
- 6.2** The EU should ensure that member states apply strict anti-bribery measures to any support provided to private companies including business conducted through third parties, such as banks providing short-term credits and reinsurance.
- 6.3** The EU should mainstream anti-corruption efforts as part of its trade and foreign policy.
- 6.4** The EU should ensure that its trade and foreign policy promotes good governance, transparency and accountability. The EU should review its trade agreements and procurement arrangements to ensure that they are not contributing to corruption and demand a level of transparency and accountability from its trading partners as a condition to its ongoing relationship. The Raw Materials Strategy, which recognized the link between promoting stable accountable government abroad and security of supply of basic resources or the EU, should form part of this process.

7. a) Donor aid provides vital assistance but does not always adequately tackle corruption and promote accountability and transparency in highly corrupt aid-recipient countries

Aid provides vital services to millions in the developing world. Unfortunately, in many aid-recipient countries, high level corruption and poor governance undermines economic growth and prevents countries from harnessing their own resources for development. This can undermine the long-term impact of development aid.⁹ The EU recognizes this with

⁹ Carlos Santiso, John Hopkins University, Good Governance and Aid-effectiveness: The World Bank and Conditionality, The Georgetown Public Policy Review, Volume 7, Number 1, Fall 2001, pp.1-22
http://www.sti.ch/fileadmin/user_upload/Pdfs/swap/swap108.pdf ; See Paul Collier’s work

the Stockholm programme and the anti-corruption communiqué calling for good governance and anti-corruption efforts to be mainstreamed as part of the EU's development and foreign policies.

As part of a whole-of-Union approach, aid can play a vital frontline role in tackling corruption. It can be done by improving internal due diligence and anti-corruption procedures and by promoting good governance, natural resource and public financial management, transparency and respect for human rights, particularly in countries where corruption is endemic.

Despite donors' efforts so far weak state structures, poor public financial management and inexperienced or ill-intentioned governments have meant that corruption remains endemic in many countries. This is often compounded by a lack of civil society participation and democratic oversight of government functions. In an age of tightening government budgets, we encourage the EU to go further in leveraging its diplomatic and financial influence in-country to support calls for transparency and combating corruption. Aid from the EU, including member states and the EC, makes up a substantial sum of the global total, as such the EU can play a unique role in combating corruption and promoting good governance abroad. We believe that the following measures in aid programming will strengthen the existing approach.

Recommendations

The EU should ensure that its in-country programmes improve governance and incentivise greater accountability. Specifically, it should:

- 7.1. Include specific, targeted and measurable anti-corruption benchmarks when negotiating jointly agreed performance assessment indicators. Such benchmarks should not include economic or fiscal conditionalities, as practiced in the past. Rather they should include basic transparency and anti-corruption requirements demanded by civil society in country, such as publishing incoming revenue and other measures to curtail high level corruption. The EC is currently evaluating its direct budget support programmes, a process to which we will submit a separate comment. Global Witness believes that this method of providing development assistance is a vital tool in ensuring basic governance reforms and encourages the EU to continue with this type of assistance, tying disbursements to basic governance and transparency requirements.
- 7.2. Shift efforts to improve governance away from a purely technical focus on laws and procedures, towards a broader agenda of promoting democratic oversight and impartiality. This approach should include encouraging the provision of space for civil society to enable it to monitor government revenue and expenditure, and securing protection for anti-corruption whistleblowers and investigators. The EU should avoid the promotion of the private sector at the expense of a strong, functioning state.

- 7.3. Work with change agents such as parliamentarians, civil society and non-formal structures of authority to strengthen democratic oversight of governments, and to provide support geared towards strengthening the ability of these agents to provide public interest information and advocacy and to ensure accountability.
- 7.4. The EU should support the implementation of the UNCAC abroad and to resource and support the UNCAC review mechanism process.
- 7.5. The EU should provide a platform for cooperation and harmonization of the above policies for EU member states who are donors. The proposed evaluation process could also be used to monitor progress in this area.

7. b) Ensuring proper oversight and due diligence of Official Development Assistance (ODA) funding

There have been instances where overseas aid has been inadvertently used to support companies who have been linked to corruption. Moreover a lack of transparency in aid flows contributes to a culture of opacity and poor public financial management.

Recommendations

- 7.6 The European Commission and EU member states should ensure that development assistance, especially where it is given through third parties and intermediaries, is not used corruptly or given to the corrupt.
- 7.7 The European Commission and EU member states should publish all aid payments and make them available to civil society in recipient countries to promote a culture of transparency and mutual accountability.

8. Providing safe haven to corrupt officials

The developed world does not just provide a source of illegitimate money and a safe haven for looted assets to corrupt leaders, it is also the shopping destination and provider of educational and medical facilities of choice. The EU should take a firm stand against corrupt leaders who siphon off their national wealth. Action should be taken to stop corrupt leaders spending their stolen money with impunity in the EU. Such cases have a huge deterrent effect on the perception of the EU as a safe haven for corruptly acquired funds.

Some EU member states have procedures to deny visas to individuals. They should be used to stop corrupt officials spending their countries revenues with impunity. The US has specific legislation requiring the State Department to maintain a list of corrupt foreign officials, and to deny visas to those on it; the EU should do the same.

Recommendations

- 7.1. Strengthen and improve procedures to help developing countries to recover looted assets and the proceeds of corruption in line with UNCAC (The UN Convention Against Corruption) commitments and ensure that repatriated assets are not in turn lost through corruption. Asset recovery should not be premised on criminal conviction but rather a lesser burden of proof as is the case with civil asset recovery cases.
- 7.2. Coordinate efforts at an EU level and work with other states to freeze the assets of foreign officials against whom there is credible evidence to suggest they are involved in corruption and state looting.
- 7.3. Deny visas to foreign leaders, and their families, against whom there is credible evidence to suggest they are involved in corruption and state looting.

Global Witness notes that a number of these recommendations have been endorsed by the G20 Anti-Corruption Action Plan annexed to the recent Seoul summit communiqué, including

- efforts to prevent and combat money laundering with a call for the FATF to continue to emphasise the anti-corruption agenda and emphasis on beneficial ownership, customer due diligence and politically exposed persons as urged by the Pittsburgh summit;
- visa bans, including ‘a cooperative framework to deny entry and safe haven in our jurisdictions to corrupt officials and those who corrupt them’;
- use of UNCAC, including mutual legal assistance and asset recovery;

Likewise the G20’s parallel Multi-Year Action Plan on Development recognised the role of effective tax systems for developing countries in mobilising domestic resources, with a call on the international organisations to ‘identify ways to help developing countries’ tax multinational enterprises through effective transfer pricing.’

Question 3.

Any meaningful monitoring mechanism must include input from civil society, media, academics and independent experts. Simply relying on official information provides scope for political interference and may distort the true picture. The model for this would be the OECD Bribery Convention working groups.

Question 4.

Global Witness would identify the financial sector as particularly vulnerable to facilitating corruption. When corrupt officials loot their countries’ assets they must find somewhere to stash it. In a number of investigations we have shown how banks in major financial centres have been happy to do business with corrupt officials allowing them to loot their countries resources. It is not only the bankers who accept money but also the

accountants and lawyers, trusts and company service providers that set up corporate structures used by the corrupt to hide their identity.

The extractive industries are also particularly vulnerable to corruption due to the large volumes of money at stake and the fact that ownership tends to lie in the hands of the state which is therefore open to abuse by a handful of corrupt officials. Particular attention should therefore be paid to the extractive industries, and payments made by EU companies to foreign governments, or officials.

Question 5.

All too often evaluations of the level of corruption by country tend to concentrate on the demand side of corruption, that is the demand and receipt of bribes, corruption in procurement deals and embezzlement by officials. A fair and balanced monitoring mechanism would give equal weight to the 'supply side' or 'drivers' of corruption such as the payment of bribes, the role of banks in accepting corrupt funds, the lack of transparency in payments by international companies and role of governments in supporting those companies who are shown to be involved in corruption. This approach will ensure that all actors who play a part in corruption are treated equally and countries with corrupt officials are not singled out while countries who fail to regulate their banks and companies, or regulate their own diplomatic and trade assistance to ensure that they do not promote corruption abroad, are largely ignored.

Global Witness would encourage naming and faming alongside naming and shaming and would welcome a ranking of member state only if it included the 'supply side' or 'drivers' of corruption as well as the 'demand side'.