QUESTIONS FOR A MULTI-STAKEHOLDER DIALOGUE ON RESPONSIBLE INVESTMENT IN WEAK GOVERNANCE ZONES

Response to selected questions from
Clive Wicks, IUCN Commission on Environmental, Economic and Social Policy

4. The DRC case study suggests that investors in weak governance host countries have to be well informed about the local political situation and about each other's activities.

- What should a company do if obtains information about wrongdoing by private actors or public officials? Should companies be encouraged to bear witness to wrongdoing? Under what circumstances should companies consider that they have whistle-blowing responsibilities?

- Should their responses be different in weak governance zones than they would be in other investment environments? If so, how?

- If companies have a responsibility to make their knowledge about wrongdoing public, how can they protect themselves against retaliation by host country actors?

I am going to use information from a Power presentation by HE Ahmedou Ould Abdallah the UN Secretary General Special Advisor to West Africa (see annex). He has been dealing mainly but not solely with problems with the Oil and Gas industry. I feel that one can easily substitute Mining for Oil and Gas as I have done below.

Disputes happen

- *Between governments and Oil/mining companies on contracts and revenues.*
- *Between governments and their populations on revenues and redistribution.*
- *Between States on delimitations of borders and maritime boundaries.*
- *Disputes between oil/mining companies.*
- *Disputes between oil/mining companies and local populations. (Added by C. Wicks)*

There is only one answer

- *All companies should be completely transparent in their operations.*
- *This should help lessen tensions but can only succeed with external support*
- *Companies to publish what they pay to local Governments.*
- *Local Governments to convey how the oil/mining revenue is used.*
- *Transparency to favour development prospects, which benefit all.*

The response should not be different in Zones of weak governance. No company should take advantage of weak governance and if they do then the companies should not receive support from any International financial institutions.

Mining Companies which respect the UN Convention on Corruption and are completely transparent should be given backing by the International Financial Community.

Oil, Gas and Mining companies should open their books to auditing by International Accountants to ensure that they are practising Transparency.

Companied which are found to be undermining transparency should be black listed by the IFIs.

Note: Transparency has to start within the companies themselves. Many National and International companies hide behind local subsidiaries so called smaller companies.

I worked in Zaire from 1982-1984 and I have never seen such levels of corruption within International and Local Firms. Some of the most corrupt employees were in fact from the EC countries. The principle as explained to me by a Company Director who tried to bribe me was "We are sent to this difficult place and we have to have a proper reward." I was told that Many directors expected to become $ Millionaires after 5 years in Zaire.

It was not uncommon for Directors of companies to have three sets of books. One for the government, one for the company and one for the Directors who were in fact creaming money from the company through fiddles on foreign exchange on the "tow parallel". This was a legal or semi legal method of accessing foreign capital by buying it from companies which exported minerals, tea. Coffee etc and needed local currency. If you agreed to pay over the Market price for foreign exchange then an arrangement was set up so that the profit could be shared between those who bough and those who sold.

Note: Because I tried to clean up corruption in the company of which I was acting Managing Director in Zaire my life was threatened and I had to escape from Zaire with armed guards protecting me.

5. The DRC case study shows that oil and mining companies provided "monetisation" services that converted the DRC's natural resource assets into (mainly) financial assets that accrued to state-owned enterprises or to the Treasury at a time when few financial and fiscal controls were in place.

- Does companies' provision of these services influence the nature of their responsibilities in weak governance host countries? If so, how?

- How can these companies avoid giving the appearance that they are aiding and abetting people who might be in a position to take advantage of the weak financial and fiscal controls in the host country?

The Extractive Industry Review (EIR) is very clear that the conventional economic theory that you can convert natural wealth such as oil, gas and mining into sustainable development simply does not work in many developing countries. In fact in many cases resource rich countries manage their natural resource very badly. Worse still the presence of large quantities of minerals can often destabilise a country Nigeria, Anglo, DMC, Sierra Leone etc.

It all comes back again to transparency. In many cases transparency will not be achieved unless the G8 and other Nations insist that it is practised. A good example is the new G8 Transparency Agreement with Nigeria.

9. The case study shows that many OECD-based companies had joint ventures and other business relations with SOEs in the DRC and suggests that these SOEs' governance rules were weak. OECD and non-OECD experience shows that weak governance SOEs can be a mechanism for lowering public wealth through waste or questionable business practices. Through their joint venture arrangements, OECD based companies provide services and revenues to SOEs.

- Are companies' responsibilities the same when they enter into joint ventures with weak governance SOEs as their responsibilities with stronger governance SOEs?

- What SOE characteristics should an investor look at when considering whether or not to enter into partnerships with weak governance SOEs and when deciding how such partnerships should be managed?

- Guidelines Chapter X asks companies to conform "transfer pricing practices to the arm's length principle." Should companies be encouraged to apply this principle when structuring transactions with SOEs, even when it is not required by law or is not a common business practice in the host country?

- Does Annex Table 1 – drawn from the OECD Corporate Governance Principles and the Guidelines for Managing Conflict of Interest in the Public Sector -- provide a useful list of considerations for identifying weak governance SOEs?

Many SOEs are very weak, corrupt and badly managed. NO respectable company should do business with these types of SOEs, they risk losing their reputations.

No company should take advantage of weak legislation but should stick to its National or International standards and help to raise the standards of SOEs and National companies.

Some companies make a bad situation worse by failing to disclose the real quantity and quality of the raw materials that they have taken from a country.

10. Many of the larger multinational enterprises in the DRC mining sector tend to be non-operating shareholders in mixed public/private companies. In this respect their positions and interests are similar to those of the DRC citizens. In addition, large publicly listed companies tend to have significant expertise in corporate governance, involving elaborate and transparent governance practices. The current DRC government has identified SOE reform as a policy priority.

- Should such companies be encouraged to seek to protect the interests of host country citizens (as shareholders in these partially state-owned companies) or are their responsibilities limited to protecting the interests of their own shareholders?

- Recommendation II.6 of the Guidelines asks companies to "uphold good corporate governance principles", while Recommendation II.3 asks them to "encourage local capacity building through close cooperation with the local community, including business interests". Should large companies be encouraged to share their governance expertise with their SOE partners?

Many NGOs question the claim made by some of the International Mining Companies that they practise very high standards and that it is the smaller companies which do not follow International standards. From the information I have received it appears that the biggest environmental and social problems are caused by the largest mining companies. No one else has the financial clout to cause the massive environmental problems that are seen in PNG, West Papua etc.

Many NGOs believe that International companies practise double standards and they quote Canadian Mining companies in particular. Canada has developed high standards as a result of bad experiences in the past with the mining industries. NGOs complain that the Canadian Mining Industry does not follow those standards when they go overseas

All countries have been asked by the UN to develop National Sustainability Plans which should include environmental, energy and resources use plans. Companies can contribute to these plans.

Note: Professor Richard Steiner, one of my colleagues in CEESP the IUCN Environmental, Economic and Social Policy Commission of IUCN has been heavily involved in setting up the Alaskan Citizens Council. This is a very effective way of getting Civil Society involved in monitoring the extractive Industry. They have a full time staff monitoring that companies comply with international standards of performance.

It is proposed that funds are set up to allow Citizens Councils to effectively monitor extractive industries. This can be done with a small percentage of annual mining and oil and gas revenue. (We can provide papers on this if you would like to receive them)

Annex

Transcript of PowerPoint Presentation made on 2 February 2005
by HE Ahmedou Ould Abdallah,
UN Secretary General Special Advisor to West Africa

1. OIL – a most vital source of energy, despite

- **Environmental concerns**
- **Its finite nature and price volatility**
- **Associated corrupt practices**
- **Security concerns**

2. Africa's Oil Production

- **1960's – less than 10 million tons per year**
- **Today – 376.4 million tons = 10.6% of the world's production**
- **Nigeria produces 30% of Africa's oil**
- **2003 – USA invested over $10 billion in Sub-Saharan Africa.**
- **By 2015 USA could be importing 25% of its oil from Africa**

3. USA and Gulf of Guinea

- **Revived ACSP (African Coastal Security Programme)**
- **This initiative will concern the Gulf of Guinea and the Bab al-Mandab checkpoint.**
- **Aims to counter piracy, maritime terrorism, prevent smuggling and protect offshore resources.**

4. Tensions in Oil Rich Areas

- **Scramble for highly priced oil in the region.**
- **Delimitation and Demarcation of Inherited boundaries**
- **Corrupt practices**
- **States weakened by over dependence on oil**

5. Disputes

- **Between governments and oil companies on contracts and revenues.**
- **Between governments and their populations on revenues and redistribution.**
- **Between States on delimitations of borders and maritime boundaries.**
- **Disputes between oil companies.**

6. Solving Disputes

- **Through government channels**
- **Arbitration**
- **Negotiation**
- **The Cameroon Nigeria Mixed Commission, a peaceful tool for settlement of a land dispute related to oil exploitation.**

7. Transparency in the Oil Industry

Should help lessen tensions but can only succeed with external support

- **Companies to publish what they pay to local Governments.**
- **Local Governments to convey how the oil revenue is used.**
- **Transparency to favour development prospects, which benefit all.**

8. International Initiatives

- **EITI of UK**
- **Evian G-8**
- **US-G-8 Transparency Initiative**

With support these could lead to:

- **Use of oil revenues to benefit countries.**
- **Support democratic reforms in producer countries: minimise risks of wars and increase stability in oil producing regions**

9. Territorial Claims

- **Gabon and Equatorial Guinea**
- **Nigeria and Equatorial Guinea**
- **Nigeria and Sao Tome and Principe**

10. Tools for Peaceful Settlement

- **GGC-**
  - **Gulf of Guinea Commission**
- **CNMC-**
  - **Cameroon-Nigeria Mixed Commission**