

# Corruption and the extractive industries in Africa

## Can combatting corruption cure the resource curse?

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### Introduction

After reaching a low point in 2002, the extractive industries globally have seen a remarkable turnaround in the past few years. Since 2002 the price of many mined commodities has risen, in some cases to record heights. The dramatic growth of China seems to be one of the most important factors explaining this boom,<sup>1</sup> and as China looks certain to continue on its current economic path, it is widely believed that the price of mined commodities will remain high for the foreseeable future, as will the cost of crude oil.

We can illustrate this recent growth in global mining by simply considering the immense profits being made by companies in the past two years. A report published in 2006 by PricewaterhouseCoopers, entitled "*Mine: Let the good times roll*", showed that the mining industry had a 'spectacular' year in 2005. Public mining companies experienced a 72 per cent increase in their total capitalisation from 2004, with net profits increasing by 59 per cent, representing an increase of US\$45 billion. This has been good news for shareholders, who received US\$18 billion in 2005, up by 82 per cent from the previous year. The increase in profits being made by the major oil and gas producing companies is also extraordinary. America's five 'super majors' reported record profits of US\$342.4 billion between 2001 and 2006.

Another indicator of the boom in the extractive industries is the amount of money being spent on global exploration. Analysis provided by the Metals Economic Group<sup>2</sup> shows that over the past four years the amount invested in exploration by mining companies has grown by roughly 250 per cent. Indicators suggest that the amount spent on exploration will continue to rise in the future. Indeed, it will have

to, for the ever-growing demand will mean that the supply of mined commodities will become increasingly difficult to sustain. The scale of demand for mined commodities is predicted to be enormous in the near future. According to some experts, in order to meet the demand over the next 40 years mining companies will need to mine five times more than they have ever mined before. Achieving this growth in mining is far from straightforward. Discovery costs have effectively trebled over the past 30 years, the average size of mineral discoveries has diminished, and discovery rates have roughly halved.

It is in this climate that some industry analysts feel that the lack of new mining sites will become a serious issue over the next few years. Consequently, the mining industry will need to become more aggressive in exploration, and there is a consensus that mining will take on increasingly risky ventures in areas that were previously seen as too precarious by investors (International Mining Magazine 2005).

Numerous African countries are experiencing tremendous growth in mining and oil production

Amid this global search for mined commodities and oil, numerous African countries are experiencing tremendous growth in mining and oil production. Over the next five years the main oil exporting countries in Africa are expected to experience an increase in

oil revenues of up to US\$5 billion (see Table 1). The US is currently importing 15 per cent of its oil from Africa, and this is expected to increase to between 25 per cent and 30 per cent in the next decade. Simultaneously, it appears that Africa has been identified by China as being one of its main sources of fuel.

The mining sectors throughout Africa are also booming, with remarkable growth throughout the continent (see Annexure A for statistics on selected countries). Indeed,

## New players and the strength of junior mining companies

A key development during this latest boom in mining and oil production is the emergence of new companies in countries that are not members of the Organisation for Economic Co-operation and Development (OECD). Most importantly, there has been a significant growth in the size and number of mining companies based in Asia and Russia, with Chinese companies set to become the most significant in the future. However, despite increasing global competition, the global mining sector continues to be dominated by companies based in Canada, the UK, the USA and Australia, as well as South Africa. Indeed, Canada's dominance in the global mining industry is revealed by the following facts: the Toronto Stock Exchange is by far the most important source of funds for the mining industry; Canadian mining companies are the most numerous worldwide; and 60 per cent of the world's mining companies are listed on the Toronto Stock Exchange.

One of the aspects that distinguishes the recent boom in global mining is the relative strength of junior mining companies. In broad terms, the composition of the mining industry has shifted, and there are more small mining companies worldwide than there were before, and their importance in terms of investment flows and outputs is growing. So, for example, in 1997, the peak year of the previous boom in global mining, 40 per cent of the total amount spent on exploration came from junior mining companies. The rapid demise of the mining industry thereafter saw this amount fall to only 25 per cent in 2001. During our recent boom, junior mining companies have done particularly well. Between 2002 and 2006 there has been an amazing 350 per cent increase in the amount that junior mining companies have spent on exploration. In 2006 total global exploration budgets were roughly the same as they had been in 1997, yet junior mining companies accounted for 63 per cent of total expenditure on exploration in 2006 as opposed to 40 per cent in 1997.

It is not entirely clear why there has been a strengthening of junior mining companies in the past few years. One factor appears to be the rise in gold prices, for gold mining represents the most important activity for smaller mining companies. A second factor appears to involve changes in the capital markets. During the decline in global mined commodity prices, investors seemed to lose trust in the junior mining sector and the infamous Bre-X scandal in Indonesia is often cited as contributing to this. Yet since 2002 the boom in prices has strengthened investor confidence and there seems to be an intensification of higher-risk investments. We can see this vividly in the success of junior mining companies on London's Alternative Investment Market (AIM). The amount of capital being generated for mining through AIM has been exceptional, with an increase of investment funds between 2004 and 2005 of 63 per cent. In return, junior mining companies on AIM reported a remarkable increase in pre-tax profits – in 2004 this was roughly US\$11 million, and by 2005 the figure had jumped to US\$205 million. In other words, there appears to be a greater interest in investing in higher-risk mining companies in the hope of making quick and impressive profits. Some fear this will create commodity price volatility in the mining sector, particularly as mining by its very nature is a long-term activity.

A final factor explaining the relative importance of junior mining companies relates to their relative dynamism and ability to operate in areas that are considered too risky by the majors. Indeed, as one company active in West Africa claimed: '... we go where others fear to tread'. To what extent such companies are more willing to operate in riskier environments is a matter for further research, and this is potentially an issue highly relevant to corruption and unethical business practices in the industry.

it is in Africa that many of the good deposits in previously risky environments are being discovered. There are numerous countries on the continent that are considered to have abundant yet under-exploited minerals and metals. The Democratic Republic of Congo (DRC) is arguably the most exciting prospect for mining companies and, depending on increased political stability, the mining sector is certain to continue to grow at a rapid rate in this country. Already since 2000 the value added to the economy of the DRC by mining has effectively doubled.

This intensification of mining and oil production in Africa has heightened concern over the impact these industries are having on human development. Before the 1980s a dominant view was that greater exploitation of natural resources for export markets would be a key to economic growth in Africa. It was

**Table 1: Potential government oil revenues: Leading African oil producers 2006–2011**

Country	Total US\$ (mil)	Annual ave. US\$	Pop. (mil)	Per cap. US\$
Equatorial Guinea	19 024	3 805	0,5	7 610
Gabon	17 305	3 461	1,4	2 472
Angola	151 125	30 225	15,5	1 950
Congo Brazzaville	14 601	2 920	3,9	749
Nigeria	266 120	53 224	128	416
Mauritania	4 369	874	3,0	291
Chad	9 797	1 959	9,4	208
Cameroon	5 939	1 188	16,0	74
<b>TOTAL</b>	<b>488 280</b>	<b>91 656</b>	<b>178</b>	<b>550</b>

Source: World Bank Group Management Response 2004

such thinking that partly inspired structural adjustment programmes and widespread liberalisation of mining in the late 1980s and early 1990s. However, while these measures were clearly successful in increasing the amount of resources being exploited and exported, thereby benefiting the companies and their investors enormously, the net impact on developing countries has been controversial.

Although disputed, numerous studies over the past two decades have shown that natural resource dependence is highly correlated with disappointing economic growth, inequality and the onset of civil conflict. Moreover, as detailed in a high-profile review of the extractive industries commissioned by the World Bank, there is growing recognition that the process of mining and oil production in developing countries is having a profound impact on the natural environment and on the rights of marginalised indigenous groups (World Bank 2004). These perverse outcomes of resource exploitation are now widely referred to as the 'resource curse' or the 'paradox of plenty'.

Aspects of the resource curse remain highly contested and have given rise to a wide range of competing theories. We need not examine the literature in detail here (see for example Rosser 2006 and Ross 1999). Yet there does appear to be a strong consensus among diverse commentators that much of the problem can be explained by *corruption*.

In the past ten years corruption has therefore emerged as one of the leading concerns in policy developments in the extractive industries. Perhaps the most significant development came in the late 1990s when a consortium of NGOs formed the Publish What You Pay Coalition. This movement demands that major oil and mining companies make public their payments to governments so that illegal deals can be thwarted. A few years after Publish What You Pay was formed, the Extractive Industries Transparency Initiative (EITI) was launched by Tony Blair's government, and this is now supported by other northern governments, leading multinational corporations (MNCs), NGOs and an increasing number of resource-rich states in the south. In the past few years loans by the World Bank Group, the International Monetary Fund (IMF) and the African Development Bank, among others, have been premised on the need for anti-corruption 'conditionalities'. Mining companies are reporting to shareholders and investors that avoiding corruption is critical to mitigating their risks, and diverse African governments, from Madagascar to Nigeria, now claim that fighting corruption is one of their top priorities in better managing resource exploitation and attracting foreign investment. In short, fighting corruption has swiftly become one of the key ideas in the effort to

make resource exploitation contribute to development in Africa instead of being a source of potential harm.

The extent to which corruption is a major problem in the extractive industries remains a moot point, the analysis depending largely on what one understands corruption to be. As this paper will argue, corruption in the extractive industries is open to differing perspectives and isolating its significance is not straightforward. Moreover, despite a great deal of rhetoric in fighting corruption and achieving greater transparency in the extractive industries, there are profound political factors that undermine these efforts. These may explain why success in combating corruption appears to be modest, at best.

With the intensification of mining and oil production as the background, the first part of this paper broadly discusses rival views of corruption in the extractive industries, the debate being simplified by contrasting an orthodox state theory of corruption with a somewhat less orthodox view on corporate corruption and 'state capture'. The next section comments on the potential consequences of corruption, focusing particularly on environmental degradation and the rights of local communities affected by mining. The final section of the paper discusses the challenges and pitfalls of anti-corruption initiatives. Here the paper first considers the technical and political limitations to combating corruption before commenting on broader debates about

the problematic consequence of over-prioritising anti-corruption measures as a means to ensure human development. In effect, this involves asking the question: what ends does combating corruption serve?

### Conceptualising the problem: corruption and natural resources

Oil rigs are alighting all along this stretch of Africa's western coastline like giant metal mosquitoes, standing on the skin of the earth on spindly legs and drilling down with steel proboscises to suck out the fluid that is the lifeblood of the world economy. Like the biting insects, the rigs can cause irritation around the site of extraction, disrupting local communities or polluting farmland. But it is this resource curse – the stealthier, time-delayed payload that accompanies the extraction, just like the malaria that real mosquitoes transmit – that is the real problem (Shaxson 2007:6).

An orthodox definition of corruption is the 'abuse of public office for private gain'. This is sometimes referred to in less prosaic terms as the 'grabbing hand

## Profound political factors undermine efforts to fight corruption and achieve greater transparency in the extractive industries





of the state'. In the extractive industries myriad forms of this type of corruption may occur. However, the most notorious manifestation of corruption involves political elites and their families or cronies plundering resources for self-enrichment, or senior officials demanding large kick-backs when brokering deals with private companies. Certain natural resources provide enormous revenues, often paid in lump sums, and are therefore lucrative targets for those seeking illicit wealth. In particular, the process of extracting oil or mined commodities may involve 'signature bonuses' and 'royalty payments', and a proportion of these may easily find their way into private bank accounts and not the state treasury. Nigeria is often cited as one of the worst examples of this; it is estimated that senior officials have stolen at least US\$50 billion from oil revenues since the mid 1960s. The theft of large sums of money by those in positions of significant power is often called 'grand corruption'. It seems to flourish in those societies where access to information is limited and revenue flows lack transparency. In situations where civil society is unable to know how much money is being earned through resource extraction, the opportunity for embezzlement is high.

As a general observation, natural resources appear particularly prone to forms of corruption. However, the link between state corruption and natural resources may be more profound than this. Numerous studies have argued that those countries that are highly dependent on natural resources for national wealth creation tend to suffer from high levels of corruption in general and tend to have authoritarian systems of government (see for example Wantchekon 1999, Leite & Weidmann 1999, Jensen and Wantchekon 2004). A collective finding of these studies is that the type of natural resource is important: those classified as 'point-source' resources – such as oil, gas and certain minerals – are more problematic than resources that are diffuse, or scattered geographically (see Ross 1999, 2001). This relationship between corruption and resources is a vital issue to consider, for corruption may not simply be the cause of problems related to resource extraction: it may also be a symptom.

### ***The rentier state effect***

An influential explanation for the deterioration of governance caused by abundant natural resources is related to the notion of a rentier state, first identified by Mahdavy (1970) through his studies on the impact of oil production in the Middle East. According to this theory, problems arise in resource-rich states because the rulers are able to generate wealth through undisclosed resource rents – or sovereign rents, as Collier (2005) refers to them – rather than through

taxation. In simple terms, where governments rely on taxation as their primary source of revenue, and where there are relatively fair elections, supplying public goods drives political competition. There is, therefore, dependence in the political process on broad-based public sentiment and a proclivity for those seeking or maintaining political power to engage in rent-producing activities as a result.

Where rulers are able to rely on natural resource revenue as their primary source of income, this may encourage, or reinforce, a detachment between them and the majority of citizens.<sup>3</sup> Political competition is driven by systems of patronage and conflict, and public spending is therefore not directed towards the public good but towards maintaining political hegemony. In this scenario, unproductive rent-seeking behaviour is likely to predominate over rent-producing behaviour.

There is likely to be a concerted effort to weaken or compromise institutions that pose checks and balances, such as the media, the criminal justice system, civil society and academia, and there is an inclination to turn to militaristic methods of social control. This in turn encourages a noxious relationship between rulers and the military, with the latter being kept loyal through a sharing of the profits from resource exploitation. In short, it is assumed that in this rentier state model the wealth derived from natural resources may result in a form of centralised government that is secretive, aggressive, paranoid and uninterested in public welfare. Such governments will

plunder resource wealth for their own ends, and not use it for the public good.

The consequences of this situation are thought to be far reaching, explaining further dimensions of the resource curse. For instance, being able to generate wealth through natural resource rents also serves to weaken other areas of the economy, which may be less vulnerable or valuable to rent seeking. This appears as a political or psychological form of what is known as the Dutch disease syndrome: corrupt rulers focus on their own wealth creation through embezzling or capturing rents from point-source resource extraction and they show little interest in developing other potential sectors of the economy, including agriculture, that may provide far more security and employment to people than industries such as oil, gas or mining (see Hodges (2001) for a good example in Angola).

Ross (2006) argues that the Dutch disease – whether triggered by political or purely economic factors – not only accounts for poor economic growth but also has a profound impact on inequality and social structure. In particular, the over-reliance on resources, such as oil and gas, tends to diminish female participation in the labour market by crowding out

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sectors that have a propensity to employ women. This in turn reduces the political influence of women, which may account for the fact that major oil and mineral producing states are characterised by atypically strong patriarchal institutions.

Summing up the multiple consequences of resource dependence in developing countries, a report published by the World Rainforest Movement (2004) claimed:

... the more that southern countries rely on exporting minerals, the worse their standard of living is likely to be. Higher levels of mineral dependence are strongly correlated with higher poverty and child malnutrition and mortality rates. They are also associated with income inequality, low spending levels on health care, low enrolment rates in primary and secondary schools, and low rates of adult literacy, as well as higher vulnerability to economic shocks. Recent academic studies reveal that overall living standards in mineral dependent states tend to suffer from high rates of corruption, authoritarian government, government ineffectiveness, military spending, and civil war.

#### **An example of the rentier state effect: Angola**

A glance at African countries shows many contenders for the rentier state effect, with several characterised by a poor history of democratic governance, relative dependence on natural resources for wealth creation, and worsening levels of corruption. In addition to Equatorial Guinea, the DRC and several countries in West Africa, Angola seems to illustrate the rentier effect vividly.

Angola is Africa's second largest exporter of oil and the third largest exporter of diamonds. In 2005 the government's oil revenues rose to US\$10 billion, and this will probably double between 2005 and 2010. According to the IMF, by 2012 Angola's income from oil will surpass Norway's (cited in Amundsen, forthcoming, p 10–12). Yet despite – or perhaps because of – this impressive resource base, Angola has one of the highest levels of poverty in the world. Although statistics are extremely unreliable, Angola is also generally regarded as one of the most unequal countries in the world.

Corruption and elite plunder seem partly to explain this disparity. Between 1997 and 2002, 'unaccounted for funds' from Angola's oil industry amounted to US\$4.22 billion. In the same years, total social spending in the country – including Angolan government spending as well as public and private initiatives

funded through the United Nations Consolidated Inter-Agency Appeal – came to US\$4.27 billion.

Through grand corruption many of the country's political elite are rumoured to have staggering personal wealth. McMillian (2005) reported that in 2003 nearly 50 Angolans in position of public office each had personal wealth of more than US\$50 million, while it is estimated that ten had personal wealth in excess of US\$100 million. The richest seven Angolans were in the government and President Dos Santos is believed to be the wealthiest of them all.

By all accounts Angola is also a country with dire institutional arrangements, and it appears that the situation is becoming progressively worse (see Amundsen, forthcoming). The President has excessive power, the judiciary is far from independent, the media

is controlled by the state, and democratic elections have been stubbornly postponed. Civil society is intimidated and infiltrated, and as a result is largely unable to hold government accountable.

Despite its impressive resource base, Angola has one of the highest levels of poverty in the world

Despite signing up to the EITI (see below), Angola was ranked as the second least transparent country in the world by the International Budget Project, with only Vietnam scoring worse. A report provided by Human Rights Watch on Angola summed up the rentier effect concisely:

When a government is the direct beneficiary of a centrally controlled major revenue stream and is therefore not reliant on domestic taxation or a diversified economy to function, those who rule the state have unique opportunities for self-enrichment and corruption, particularly if there is no transparency in the management of revenues. Because achieving political power often becomes the primary avenue for achieving wealth, the incentive to seize power and hold onto it indefinitely is great. This dynamic has a corrosive effect on governance ... Instead of bringing prosperity, rule of law, and respect for rights, the existence of a centrally controlled revenue stream – such as oil revenue – can serve to reinforce or exacerbate an undemocratic or otherwise unaccountable ruler's or governing elite's worst tendencies by providing the financial wherewithal to entrench and enrich itself without any corresponding accountability (Human Rights Watch 2003:1).

#### ***Corporate corruption and state capture***

At its simplest, the rentier model encourages the idea that rent-seeking elites and public officials in underdeveloped resource-rich states are the primary

source of corruption within the extractive industries. In other words, corruption is caused by domestic conditions and solutions to the resource curse are to be found at this level. Yet this is only part of the problem, and state-centred theories of corruption become more complex when we ask whether corrupt relations bring any direct benefits to the companies involved. This appears to be a divisive issue.

It is now well documented that large foreign corporations active in the extractive industries have paid enormous bribes to corrupt governments. By way of example, a senior employee of a consortium of oil companies operating in Nigeria, including a subsidiary of Halliburton, confessed to French investigating authorities that a slush fund of \$180 million was used to bribe officials in Nigeria (Open Society Justice Initiative 2005:24). Although companies paying bribes are open to the accusation of complicity in corruption, there are those who suggest private companies remain unwilling partners in these criminal exchanges. It is not uncommon to hear that companies would rather operate in areas of 'good governance', defined partly by transparency and the rule of law (see, for example, Bray 2003). Paying bribes is costly and being implicated in corruption scandals may undermine the 'social licence' of companies to operate. This was an argument made, for example, by CEO Bobby Godsell in response to evidence that AngloGold Ashanti, one of the world's largest gold mining companies, gave cash to a rebel military group in the DRC. Payments were apparently made unwillingly and this was a matter on which Godsell claimed the company had 'messed up' and regretted deeply (Evans 2005).

If we accept this view, then bribe payments can be considered burdensome to private operators, raising the cost of doing business, and we may therefore assume that business would prefer not to pay them. According to some sources, corruption is part of the risk for companies operating in the extractive industries. In a report on corruption in Tanzania published by the Christian Michelsen Institute it was argued that:

Efforts to combat corruption are widely regarded as important for improving business conditions in developing countries. Corruption increases the cost of doing business, and imposes a tax on entrepreneurial activity (Fjeldstad et al 2006:1).

This understanding is also supported by the work of the influential Canadian think tank, the Fraser Institute, which conducts industry surveys showing which countries have the most favourable conditions for mining activities (Fraser Institute 2007). In their

ranking system corruption is listed as a major deterrent to foreign investments, although excessive tax and environmental regulation also contribute to the problem for mining companies. Likewise, PricewaterhouseCoopers (PWC) reported that the threat of paying bribes is often a decisive matter for oil and mining companies when evaluating a new venture. In fact, according to PWC, 41 per cent of 32 leading mining companies in 2001 withdrew from an otherwise profitable venture owing to the threat of having to pay bribes and deal with corrupt officials (PWC 2001). A report by Global Witness (2004:83) described the negative implications of corruption for companies by explaining how transparency benefits everyone except corrupt governments:

Transparency is in the interest of almost everyone concerned – citizens, companies, donor governments and the wider international community – except a corrupt elite grown fat from the systematic misappropriation of state assets ... Multinational businesses do not benefit from having to compete on the size of kickbacks rather than technical merit, nor do they gain when their legitimate payments to governments end up funding social division.

Yet to conceptualise corruption in the extractive industries as being a risk only for private companies seems limiting. Here it is useful to review some recent work on corruption and governance by a group of experts at the World Bank Institute led by Danny Kaufmann.

### **Corporate corruption**

Since the mid 1990s the World Bank has been the main driving force in elevating the issue of corruption into mainstream policy debates. Initial work by the bank tended to emphasise bureaucratic and public sector corruption, and it has depicted the private sector as one of the primary victims. Yet in the past few years Kaufmann and his colleagues have challenged what they call 'conventional wisdom' on this subject. Perhaps most importantly they have turned to business surveys to show that companies operating in weak states or in those states undergoing transition, are not simply passive victims but are active parties to corruption as it brings several benefits. In essence, what Kaufmann and his colleagues have realised is that corruption is not only the abuse of public office for private gain, but also the use of public office for private gain by third parties: the grabbing hand of the state is joined by the grabbing hands of private companies. Discussing evidence of corporate corruption Kaufmann and his co-authors argued:

## Corruption is part of the risk for companies operating in the extractive industries

It is critical to recognise, from a political economy perspective, that these forms of corruption generate substantial gains ... thereby challenging the premise that these firms are coerced and making it that much more difficult to develop effective constraints on such behaviour (Hellman et al 2002:21).

This is an argument that may seem provocative or unexpected coming from the World Bank, but it is one that is familiar to those who are increasingly concerned about what they see as the destructive power of multinational companies. For example, John Rumbiak, supervisor of the Institute for Human Rights Study and Advocacy in Papua, Indonesia remarked:

As an activist from the Global South, I have witnessed, in excruciating detail, the devastating impacts of multinational corporations on the natural environment, on the basic human rights of people – primarily indigenous communities – and also on the democratic governance of entire countries (Rumbiak 2003).

In conceptualising corporate corruption, Kaufmann makes several important distinctions. Perhaps most significant is the unbundling of corporate corruption into administrative corruption and state capture. Administrative corruption involves bribe payments to circumvent the implementation of existing laws and regulations, whereas state capture refers to the process whereby companies illicitly affect policy decisions, legislation and regulatory frameworks for their own benefit. In other words, state capture describes how companies change the rules of the game in their favour, whereas administrative corruption describes how companies get away with breaking the rules.

Based on research on the activities of firms in transitional economies, Hellman et al (2000:3) describe how state capture is often widespread, giving rise to what they call a 'capture economy':

In many transitional countries a capture economy has emerged, where rent-generating advantages in the form of policies, laws and regulations, are sold by public official and politicians on an 'a la carte' to private firms.

Here the analysis focuses on transitional states, but in other publications by the World Bank on state capture the authors make it clear that this is also a growing problem in numerous advanced OECD nations. By using this expanded and less conventional definition of corruption, Kaufmann and Vincente (2005) have conducted empirical studies that challenge other well-

known corruption indices. Due largely to the influence corporations have on the political process, countries such as the US, Canada, Spain and Italy, are ranked below the likes of Chile, Botswana and South Africa in terms of their levels of corruption. Indeed, the US scores particularly badly, and although Kaufmann and Vincente do not provide detail, we suspect that the political influence of the oil majors contributes to America's poor governance ranking.

### Legal corruption?

In analysing state capture, Kaufmann recognises that there are also numerous ways in which companies may capture the state without recourse to crude exchanges of cash, and this influence may be deemed illegal or not depending on the country in which it takes place. Of particular interest for Kaufmann is the practice where companies lobby governments and donate money to political parties. However, we can perhaps take this analysis further and note how the undue influence of companies is not only achieved by offering gifts and bribes, but can also manifest in threats and 'bullying'. In particular, companies may influence state policy by threatening the withdrawal of investments (see "Mining, corruption and environmental degradation" below for an example).

Appreciating the wide range of ways in which companies can exert undue influence, Kaufmann and Vincente (2005) advance the notion of 'legal corruption'. In doing so they lead the debate on conceptualising corruption into contentious territory. They write:

It is timely to explore a less traditional definition of corruption, one that accounts more broadly for the undue benefits derived by the private few from their excessive influence in shaping the institutions, policies, laws and regulations of the state to their own ends. Vested interests that remove public policy from the realm of democratic – i.e. contestable – decision-making should be an important component of this new definition. Undue influence by private vested interests on the state sector may, or may not, involve the exchange of a bribe or related form of illegal corruption. In other words, room is thus provided, in this more neutral definition of corruption, for so-called legal forms of corruption, which can be defined simply as the 'privatisation of public policy.' Such an alternative definition focuses on the key mediating institution or agent committing the abuse of power, namely the institution of (undue) influence, driven by vested interests.

## State capture describes how companies change the rules of the game in their favour



It is a moot point whether Kaufmann's definition of legal corruption will gain widespread recognition, and we suspect that corruption will continue to be seen in a narrow legalistic sense. Moreover, it is not clear that he has fully developed the notion of legal corruption. Indeed, while it seems clear that democratic decision-making can be undermined by private and non-elected interests – and this appears to be a particular problem in the extractive industries – it would be interesting if the concept of legal corruption was extended to the level of inter-governmental organisations such as the World Bank. As is well known, the World Bank is frequently accused by critics of being an institution less concerned with the plight of the poor in developing countries than with the interests of powerful MNCs based in OECD countries. We need not explore to what extent this accusation has merit, but it seems reasonable to argue that if legal corruption is to become a meaningful concept it should be extended to cover the activities of governments and inter-governmental organisations, not only companies.

### The political economy of corruption

On one level orthodox 'state-centred' theories of corruption and the somewhat less orthodox theories of 'corporate corruption' may seem to be in contrast to each other, though we do not believe that the study of corruption must choose between these competing theories in an exclusive way. The more obvious question is whether in actual case studies it is possible to detect where the power lies in corruption. In other words, when a bribe is paid we may wonder whether it is the result of a public official extorting a company, or whether it is the result of a company wanting to buy favours and influence.

We may speculate that in the extractive industries the bribe takers have a strong bargaining power, and this may increase in the future. The intensification of international demand for resources, coupled with the growing competition from a host of foreign companies, may mean political elites can play companies off against each other and insist on burdensome bribes and favours in return for concessions and licences. Yet in countering this scenario, one group of experts suggests that a combination of superior technical expertise held by companies, as well as the short-term mindset of officials, may tip the balance of power in favour of companies:

It would be wrong to suggest that foreign investors hold all the cards as they negotiate with host countries; but they often have the best possible professional support from advisers charged with acting in their best

commercial interests. Host states might lack the resources to do the same and might find themselves sorely tempted to exchange their long-term right to regulate foreign investors for short-term gains (Ayine et al 2005:2).

Complicating this line of inquiry is the possibility that conceptualising corruption between companies and public officials as a competitive exchange, with 'winners' and 'losers', is something of a simplification. For one thing, corruption may often be mutually beneficial for both parties. Consider, for example, the case of Equatorial Guinea, Africa's third largest exporter of oil, with the US being the primary consumer. In 2004 a US Senate special investigation was launched amid mounting evidence that ExxonMobile ChevronTexaco, Marathon and Hess, among others, had paid several million dollars in bribes for oil drilling rights, reduced tax burdens and favourable environmental regulations. The same companies were accused of assisting President Obiang and other leading politicians to launder vast sums of public money out of the country. In 2004 it was alleged that US oil companies were giving more than US\$4 million to relatives of President Obiang so that they could live and study in the US (see McSherry 2006).

According to Lawrence Cockcroft of Transparency International (TI), such mutually beneficial deals are widespread in Africa, and the payment of bribes is often associated with reduced tax burdens for companies.

Most African countries operate some form of tax break for new investors, with varying degrees of generosity. In fact, such incentive schemes are frequently deceptive in that the real deal is being done in spite of them and alongside of them, with a key cabinet minister or official coming to an alternative arrangement which may well guarantee an offshore payment for the individual in question as well as a 'tax holiday' for the company concerned (Cockcroft cited in Bond 2006b:18).

The possibility that corruption in the extractive industries may represent a mutually beneficial relationship between the bribe giver and the bribe taker is made more likely by the fact that that political elites and governments have direct economic interests in private companies. Such conflicts of interest may create a complex blurring of private and public governance, rendering the distinction between a state theory of corruption and a corporate theory of corruption untenable in many cases. Thus, for example, the extensive report on the mining sector in the DRC

Is a bribe the result of a public official extorting a company or of a company wanting to buy favours and influence?



by a UN panel of experts identified an 'elite network' profiting from the illegal plunder of resources in that country, and contained a long list of Congolese officials, military personnel and private businessmen (United Nations 2001). More recently reports have emerged of systemic corruption involving the rapid privatisation of the DRC's largest state mining company, Gecamines. Canadian and South African junior mining companies are thought to have formed joint ventures with Congolese officials that have gained Gecamine's assets for exceptionally low prices (Hund and Verbruggen 2006:55).

Similarly, in a recent report published by the National Democratic Institute for International Affairs on the potential role of legislatures in promoting transparency in Africa's extractive industries, conflicts of interest were noted as a serious problem in Ghana, as well as many other countries.

In countries with weak ethical standards, legislators are just as likely as members of the executive branch to maintain business or personal ties perceived to be conflicts of interest. In Ghana, for instance, elected representatives and government ministers may serve on the boards of corporations over which they have direct or indirect oversight ... Extractive industry oversight may be further undermined by legislators' private business dealings with mining or oil companies (Bryan & Hofmann 2007:27).

As alluded to by Kaufmann's research, we know that conflicts of interest are also a potential problem that can spread to the governments of so-called 'home countries', and it is therefore not only an issue in developing countries with weak state capacity. It is a matter of growing concern that many of the key mining and oil companies make substantial contributions to political parties in OECD countries. As argued by Amnesty International, the reluctance of the US government to prosecute four major mining and oil companies for their catalogue of human rights abuses may be explained by the fact that in 2002 these companies donated US\$2.8 million to the Republican Party's election campaign (Amnesty International 2005). To make matters worse, senior politicians and diplomats frequently move from public office to take up senior positions in companies. The lists of senior board members of the largest mining companies contain many former diplomats, politicians and senior statesmen.

Joseph Stiglitz points out that the revolving door syndrome is equally a problem at the level of inter-governmental organisations, although few have scrutinised this. In an article published in the British newspaper *The Guardian* Stiglitz argues:

As the  
governance of  
natural resources  
transcends  
national  
boundaries, so  
too must our  
analysis of  
related  
corruption

... there seems to be no such rule on revolving doors in place at the IMF; its first deputy managing director moved from his senior public sector job to the vice-chairmanship of one of America's largest financial institutions. The IMF is widely viewed as reflecting the ideology and interests of the financial community, of responding more to its concerns than those of the developing countries it is supposed to be helping. In Indonesia, there were billions of dollars to bail out foreign creditors, but paying out far smaller sums to provide food and fuel subsidies for those thrown out of their job or who saw their wages plummeting was viewed as a waste of money. Western banks benefit from such bail-outs (Stiglitz 2002).

This may be regarded as a controversial argument, but it is noted here to raise awareness that corruption cannot be conceptualised only as a domestic problem because it also has international and inter-governmental dimensions. Indeed, in an era when increasing power is wielded by non-elected officials in inter-governmental organisations, combined with the dramatic rise in power and wealth of MNCs, it is clear that state-centred theories of corruption are highly limiting. In other words, as the governance of natural resources transcends national boundaries, so too must our analysis of related corruption.

### **The impact of corrupt resource extraction on the environment and local communities**

From the above discussion, we can see how the issue of corruption in the extractive industries is both multidimensional and contested. However, the issue of corruption is further complicated when we consider its manifestation in terms of the environment and local communities. These are two areas that are increasingly controversial in the extractive industries, although the issue of corruption is not often considered.

### ***Mining, corruption and environmental degradation***

According to industry analysts, there have been considerable improvements among mining companies over the past ten years to mitigate environmental impact, although the same commitment is less clear from companies in emerging markets such as China, India and Russia, as well as many of the junior mining companies that seem to operate below the radar of civil society scrutiny. Most countries require in-depth environmental impact assessments that lead to environmental management plans, which should

contain details of what precautions companies need to take and how their activities should be monitored. Care needs to be taken not to typecast the entire mining industry as environmentally destructive, and it must be recognised that some environmental impact is unavoidable when supplying commodities that are in demand. However, mounting evidence suggests that mining has been excessively destructive to our natural environment and there is little reason to believe it will not continue to be so in the future.

Perhaps the most worrying aspect of mining involves pollution and the contamination of the environment with highly toxic substances. The most spectacular pollution occurs when waste, known as tailings, is dumped directly into the environment with little processing, or when tailing dams fail and huge quantities of contaminated water are released into the surrounding area. According to the United States Environmental Protection Agency, the contamination of water with metals and toxic substances from mining represents one of the top three ecological security threats in the world (WRI 2003).

Mining is also destructive in terms of the excavation and dumping of soil and rocks. In this regard technological improvements may have been counterproductive. Open-pit mining is thought by some to have a more profound impact on the environment than deep-shaft mining. It occurs at a more rapid rate and has become more economically viable as a result of the development of ever more powerful bulldozers and land clearing machines.

The combined impact of topsoil excavation, toxic waste and the tendency for mining operations to require large amounts of water, becomes particularly damaging when mining occurs in areas of high biodiversity. Indeed, mining represents an important threat to protected areas and natural forests. As a result of the increasing pressure to find new deposits, mining operations in many parts of the world are responsible for the shrinking of natural habitats and protected areas. The World Resource Institute (WRI) is one of the leading organisations that provides data on the environmental hazards of mining. Although deforestation is linked most obviously to logging, the WRI claimed in 1997 that 38 per cent of the world's remaining pristine forests are threatened by mining activities and exploration (cited in World Rainforest Movement 2004). In 2003 the WRI provided data showing that more than 25 per cent of the world's mines are situated in or within a 10 km radius of strictly protected areas; that roughly 30 per cent of the world's mines and new exploration sites are situated within areas of intact ecosystems; and that roughly 30 per cent of the world's mines are located in stressed watersheds (WRI 2003).

It is difficult to know to what extent corrupt activities can increase the negative environmental impact of mining. Environmental organisations and civil society groups argue that the fundamental fault lies with skewed policy priorities. According to them, governments and key lending organisations seem to place environmental considerations low down on their list of priorities. There is a perceived apathy towards environmental concerns caused by the quest for profits.

However, as a general concern, less developed countries with weak political institutions may be particularly vulnerable to excessive environmental degradation by mining activities. This is partly because in the poorer states there will probably be less urgency in balancing economic considerations with environmental concerns. But it is also highly likely that where there is inadequate state capacity to regulate mining, unethical and criminal activities may flourish with impunity. This was the conclusion reached by the WRI:

### Mining represents an important threat to protected areas and natural forests

Many mineral-dependent countries in the developing world lack important safeguards to ensure that responsible mining occurs, such as the ability to enforce laws, control corruption, and foster a strong civil society. Nearly one quarter of active mines and exploration sites are located in countries where governance structures are weakest (WRI 2003:4).

Moreover, through a process of state capture, mining companies may weaken environmental regulations. Reports suggest that investment deals struck between copper mining companies and the Zambian authorities mean that some of the companies are now exempt from being prosecuted for environmental degradation (Anon. 2005). This is a matter of serious importance, as copper mining in Zambia is thought to have a highly negative impact on the environment and people's health. In one township situated near a copper mine, it has been estimated that 90,000 children have been exposed to lead and zinc poisoning, and extremely high levels of sulphur dioxide emissions have been recorded (Feeny 2001).

A further issue of concern relates to the efforts by mining companies to gain access to formerly protected areas. Consider the case of Ghana. In the early 1980s, Ghana was one of the first African countries to liberalise mining laws under the guidance and with support of the IMF and World Bank. Ghana has in the past been regarded as a mining success story, being the second largest exporter of gold on the continent. Yet the impact on Ghana's tropical forests of the burgeoning mining sector has been ruinous. According to a report published by the World Rainforest

Movement (2004), an average of 2 million hectares of forest is lost to mining every year. In 2003, a coalition of civil society groups began a campaign to reverse the decision made by the government to grant exploration licences to mining companies within protected forest areas. It was claimed by the coalition that the granting of these licences was demanded by international mining companies, who threatened the Ghanaian government with the prospect of moving their investments to Tanzania. This appears to be a clear example of state capture through aggressive tactics or bullying.

The case of Ghana may be a warning to other African countries. Reports already suggest that in the DRC there have been encroachments into protected forests, including gold mining in the Okapi Wildlife Reserve and the Kahuzi-Biega National Park. As mining is predicted to grow substantially over the next few years, it seems likely that the pressure on the government of the DRC to provide mining licences in conservation areas will increase. The extent to which these decisions will be subject to democratic processes remains doubtful.

### ***Mining, corruption and the exploitation of local communities***

Mining often occurs in rural areas inhabited by people who have lived in the region for generations. Many of these people are recognised as indigenous and have a traditional way of life intimately connected to their environment. With the continuing expansion of the mining industry, an increasing number of such communities are coming into contact with mining companies.

In theory mining represents opportunities for local economic development, as it creates jobs and enormous wealth potential. Yet it is clear that mining also creates immense tensions at the level of local communities, and this is a subject that continues to receive much disapproval and concern. Indeed, in the 2004 World Bank's Extractive Industries Review (EIR), the issue of the impact of mining on indigenous communities was given considerable attention. It was noted by the EIR that the vast majority of human rights abuses reported to international human rights organisations by indigenous groups stem from the exploitation of natural resources on their lands.

Submissions to the EIR by organisations working on behalf of indigenous groups raised a number of interrelated concerns. These can be summarised as follows:

- Although contested, it is recognised in international law that indigenous groups have the

power to withhold their consent to activities that adversely affect their human rights. Such groups are expected to have access to information, be fully integrated into relevant decision making processes, and to be autonomous – an ideal referred to as 'free, prior, informed consent' (FPIC). In many cases of resource exploitation, FPIC is not adhered to. In extreme cases indigenous groups are simply ignored, and they only realise that their lands have been given to companies when work begins or eviction notices are served. Forced removals can follow and the suffering that results is tremendous.

- Where financial compensation for relocations is given, it is often presented in the form of one-off payments. In comparison to the enormous wealth that mining companies enjoy, these payments are frequently seen as miserly and they are quickly spent.

### **Mining creates jobs and wealth potential but also creates immense tensions in local communities**

- Where mining companies seek formal consent from affected communities, this is often achieved through propaganda, impressive presentations, and extremely attractive promises for the future, which are misleading. People are assured of employment opportunities and investment in local infrastructure, including roads, schools and healthcare facilities. Individuals are told they will receive generous sums of money when relocating. Local people who are either illiterate or unable to access more information seem easily

swayed by such offers, yet communities are rarely offered unbiased assessments that include the potential negative impacts of mining.

- Promises made by companies form part of their voluntary corporate social responsibility programmes. They are typically not legally binding and communities can be presented with ambiguous detail on time frames. The situation is ripe for broken promises and disappointing outcomes.
- The environmental degradation that tends to accompany mining operations can have a severe impact on local communities through water shortages, air pollution, contamination of natural water supplies by toxic waste, and the resulting loss of local biodiversity. Compensation for the impact of environmental degradation is rarely forthcoming.
- The local economic development achieved by mining tends to be to the detriment of indigenous peoples. Although promised access to mining jobs, employment opportunities are in fact limited because of a skills shortage. The majority of new jobs are taken by an influx of specialised labour, and



indigenous people tend to occupy a marginal and precarious position in the resulting new economy. As a result of losing their traditional lands, they are denied the ability to live in a self-sustainable way, and are expected to find new money-making ventures to survive.

- The impact of resource extraction is typically greater for women. Whereas women traditionally occupy an integral position in indigenous communities, resource extraction tends to promote men's dominance in the local political economy. Companies, almost exclusively run by men, tend to negotiate with local men and ignore women completely. The few jobs available through mining are given to men only, and the influx of mining labour tends to comprise men without families. Mining communities therefore tend to be excessively patriarchal.
- The negative impact on communities is exacerbated when mining operations close, and often this occurs suddenly with no consultation. The closure of mines creates an upsurge in local unemployment, which results in a myriad of social problems. Infrastructure maintained for the sake of resource extraction may be neglected and its upkeep becomes burdensome for local authorities. Local communities often complain that when mining ends there is a significant deterioration in their quality of life, and they are faced with the long-term consequences of unemployment and an impoverished environment.

Where mining has conformed to this list of negative outcomes for local communities, it is tempting to label the entire process as corrupt and lacking in transparency and accountability. However, care needs to be taken to distinguish between corruption and bad policy or unethical business practices. Many of the negative consequences for communities caused by mining can be attributed to reckless planning and skewed priorities. It should also be realised that achieving an ideal scenario by mining companies is far from straightforward. For example, although compensation for communities relocated from mining activities may often be scandalously low, there are no industry standards in this regard. Calculating compensation is therefore arbitrary and mining companies complain that any amount given will be seen as too little by their critics.

However, several aspects of the relationship between mining companies and local communities are cause for concern. Two of the key aspects we have dealt with already, namely the potential for corruption to cause environmental degradation, and the potential that state capture will allow mining companies to

encroach on protected areas. These issues are clearly related to the plight of indigenous peoples.

Moreover, as a general point, we strongly suspect that in countries with weak institutions and high levels of corruption related to mining and oil production, the state may have scant regard for the well-being of the rural poor. The rentier state syndrome suggests a country in which public sentiment is not critical to political hegemony, and civil society is weak, intimidated, and denied access to impartial systems of justice. The fact that corrupt elites may have direct financial investments in mining ventures also suggests that costly interventions and community development programmes may be less likely to materialise.

If we are to be more specific than this, we can hone in on the local dynamics between companies, authorities and communities. Here we are interested in how mining companies turn to bribery or engage in corrupt relations with local authorities or other gatekeepers to manage the tensions that arise within communities.

#### **The capture of local communities?**

There are several examples suggesting that mining companies attempt to buy influence in communities, and we can think of this as a localised dimension of state capture. For example, a consortium of Kenyan mining firms and Tiomin, a Canadian mining giant, has recently received the go-ahead to begin mining

titanium mineral sands on the East Coast of Kenya. This venture is controversial for several reasons: there are allegations of elite level corruption; the project involves the relocation of approximately 1 500 families; and environmentalists remain highly concerned that the process of extracting the mineral sands may have a profound impact on the environment and the health of local communities (Kithi 2004).

As a response to fears of future environmental degradation and concerns about the extremely low compensation being offered for the relocations, the affected communities formed their own committee. This was tasked with collating information and petitioning the local and national authorities. According to the Kenyan Human Rights Commission, the dynamism of this organisation was severely undermined by the fact that its leadership tier was subject to bribes and inducements by representatives of the mining firms.<sup>4</sup> Several of the committee leaders were given motorbikes, while others were actually employed by the mining company.

A similar situation has been reported in South Africa in Limpopo Province, where roughly 80 per cent of the world's platinum is located. Some members of the

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communities situated on the site of the largest platinum mine in the world, near Polokwane, have mounted a well-publicised campaign against Anglo Platinum for what they see as unjust relocations and insufficient compensation. Anglo Platinum is thought to earn as much as US\$1 billion a year from this mine alone. Many community members are unhappy with the one-off payment of approximately US\$3 000 offered to each family for moving, and they claim that the housing provided for relocated families is sub-standard. Further criticism is levelled at the way the compensation payments are made – Anglo Platinum has offered half the money in advance, and the remainder when the last family from the communities has moved. It is felt that this is a deliberate ploy to encourage division in the communities and ensure that those who agree to the relocation package will put pressure on those who are holding out for greater compensation.

In its negotiations with the communities, Anglo Platinum is also accused of dividing the community through direct bribe payments. According to best practice, Anglo Platinum encouraged the communities to set up democratically elected committees to oversee the relocations and communicate directly with the company. But Anglo Platinum is paying the executives of these committees for their time, which some believe accounts for the committees' overwhelming support for the company. Since they were formed, the committees have unanimously decided that their executives cannot be re-elected.

In many African countries, mining companies therefore engage in corrupt practices to gain consent and control of land. This may involve payments to local authorities and also payments and favours to tribal authorities. In the troubled Ongoni region of Nigeria, Shell have been accused of paying 50,000 naira for the signatures of village chiefs and community development committees in order to gain consent for mining on their lands (Rowell et al 2005:13).

These examples of local communities and their interaction with a mining company, if accurate, are indicative of a state of affairs we suspect is common in regions that are poor and the state is relatively weak. Those who control mining operations can engage in corrupt and illegal means to consolidate their local power, restrict potential protest, and thereby create a favourable environment for exploitative mining activities. This may involve the payment of bribes to local authorities, traditional leaders, civil society groups, local media and the police. We do not know how widespread this problem is, but it seems to be a recurring story in the available literature. We also find similar stories outside Africa. For example, in a damning report on mining in the Philippines, written

in 2006 by a group of NGOs led by then British MP Clare Short, it was explained that:

A pattern appears to exist of mining companies attempting to capitalize on, or generate, division within indigenous communities. In cases where the consent of the indigenous people has not been forthcoming, non-representative indigenous leaders have been created and recognized by the National Commission on Indigenous Peoples and the mining companies. The indigenous people view the selection of elders through procedures that do not respect customary laws as invalid. According to them consent obtained in this manner should not and cannot be the basis of FPIC (Doyle 2007:28).

It is important to note, however, that bribes and illegal payments are not the only mechanism for achieving local power by mining companies or managing the detrimental externalities of their operations. Expenditure designed to smooth social relations may easily blur into less obviously corrupt payments and philanthropic gestures, and these may also blur into genuine acts of corporate social responsibility. This is not to suggest that corporate social responsibility is a form of corruption, but it is open to abuse, and 'gifts' to communities may be viewed as cynical tactics to win them over.

### In many African countries, mining companies engage in corrupt practices to gain consent and control of land

In other circumstances the social relations of mining companies may cause corruption within the broader community to blur into more brutal and noxious activities. There are several notable case studies in which mining companies seem to be protected by the state, or by non-state security companies, who deal with community protests over mining by using outright intimidation and violence. Activists have noted this in Nigeria. Woods (2006) describes the situation in one region:

Military and security personnel blanket the area around Yenagoa to protect oil interests. The communities are under siege. In Odi, a community adjacent to a well built in 1958, villagers are demanding basic services like clean running water, electricity, and schools. The response from security agents has been severe. Our delegation watched in horror as one young man after another came forward to show fresh wounds ... The young men were beaten, tortured, and imprisoned, as a warning to others.

A similar situation has been reported in Tanzania, where communities protested about the environmental impact

of mining by Barrick Gold. In response, it is alleged that the local military and police illegally detained community activists and shot and wounded six people (Glynn 2006).

We can see that localised corruption – whether it is the more extreme form noted in Nigeria and Tanzania, or the less violent example noted in Kenya – has a profound impact on the lives of the poor. It severely weakens the ability of communities to organise themselves better and achieve a political voice. This is not only a direct result of bribe payments, but also of a sense that mining interests have an overwhelming authority and influence, thereby creating a defeatist mindset that further nullifies community mobilisation. In this regard one report on gold mining argues that ‘Bribery is often difficult to prove and local communities can experience a sense of powerlessness – believing even if they follow the correct procedures they will not be able to influence outcomes’ (Catholic Agency for Overseas Development 2006:27).

### **Discussion: The challenges and dangers of fighting corruption in the extractive industries**

There is little doubt that over the past decade the issue of corruption in the extractive industries has been given greater priority by governments, international organisations and many NGOs. Drawing on the conceptualisation of corruption presented above, the following pages discuss a number of critical issues relating to this effort to reduce corruption. The remainder of the paper is divided into two broad sections. The first considers some of the main challenges to combating corruption, which includes litigation and transparency initiatives. The second part involves a broader analysis of what combating corruption means in Africa. This involves considering the contested relationship between fighting corruption, on one hand, and promoting human development, on the other.

### ***The challenges to reducing corruption in Africa's extractive industries***

#### **The limitations to litigation**

Although not all resource-rich countries have robust legal frameworks, there are many that have taken steps to strengthen the criminalisation of bribe payments and the laundering of profits derived from corrupt activities. In recent years North American and European countries – referred to as ‘home’ by some multinational companies – have also made advances in formulating legislation that better targets the corrupt activities of their companies operating abroad. These new criminal law developments are encouraged

through several international agreements, the most important being the UN Convention Against Corruption (2003) and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1999). There have also been regional treaties in southern countries that address bribe payments, for example the Southern African Development Community Protocol Against Corruption (1999) and the African Union Convention on Combating and Preventing Corruption (2003).

Despite these international agreements and the sometimes real advances in national legislation in ‘host’ and ‘home’ countries, the challenges facing litigation as a means of reducing corrupt practices are numerous, which is borne out by the scarcity of successful prosecutions. For example, TI has monitored the enforcement of the OECD Convention and its

prognosis, while diplomatically phrased, has not been favourable. Out of 24 signatories of the OECD Convention reviewed in 2005, only three countries had managed more than one prosecution. In 13 countries there had not been any prosecutions, and in 11 there had not been a single investigation. It is noteworthy that Canada, the UK and Australia, all countries with strong global mining interests, were shown by the TI review to be among the weakest in addressing overseas bribe payments (Heimann et al 2005).

A superficial analysis would emphasise capacity and skills as the key challenges facing litigation, particularly in developing countries. Indeed, litigation against political elites and companies is immensely complex and therefore costly. Cases may cross international boundaries, and involve a myriad of front companies, secret bank accounts and middlemen. It will not always be clear who is the main benefactor and instigator of the crime. Given this complexity, the capacity to investigate and prosecute corrupt officials and corporations is often inadequate.

The problem stems from the fact that the victims of corrupt activities are often unaware of the crime. The process of beginning litigation invariably relies on a proactive investigation, and this cannot happen if no victims bring cases to the authorities. An exception is when corruption leads to the collapse of a financial institution and the authorities are approached by those who have lost their assets. Because it is normally a ‘victimless crime’, we suspect that the vast majority of cases are obscured from the criminal justice system as there are too few individuals to give evidence to form a criminal case. This situation is aggravated by inadequate whistleblower protections, which diminishes the likelihood that those with critical inside information will risk approaching the authorities.

The capacity to investigate and prosecute corrupt officials and corporations is often inadequate





However, although there are straightforward technical reasons why corruption may go unpunished, political factors create a more profound set of challenges. Efforts to investigate and prosecute political elites and companies by private parties, including lawyers representing communities, can be both dangerous and hopeless in countries where rent seeking is endemic at a senior level, where there is a lack of media and civil society freedom, and where corruption permeates the judiciary, the police and civil society. It seems reasonable to assume that those countries suffering the highest levels of corruption will be the least effective at responding to investigations and independent litigations, which means that corruption becomes a self-reinforcing syndrome. This, in turn, may encourage a defeatist mindset among those who disapprove of the status quo.

A proactive response to corruption in the extractive industries by African governments may also be unlikely to materialise. A straightforward dilemma is that senior politicians may be complicit in corruption. However, it is also fact that mining and oil ventures tend to involve profit sharing agreements between companies and the government, and politically influential citizens can have direct interests in companies. Such arrangements make it highly unlikely that African governments will want costly litigation to take place, and consideration may be given to national economic interests.

At an international level, while some countries have shown improvements in prosecuting companies for committing corrupt acts abroad, we must also recognise that the extractive industries have increasing geo-political importance, particularly in strategic resources such as oil. The intensification of investments in mining and oil companies, coupled with the extraordinary levels of profits being made by financial institutions, must surely compromise the decision as to whether a 'home government' acts on evidence of malpractice or criminality. Moreover, as was argued above, the challenge in investigating and prosecuting multinational companies may also involve their political influence back home. It is not only in corrupt African countries that investigators face considerable political obstacles and dangers. The UK Department of Trade and Industry has been accused of a remarkable lack of 'political will', given its tepid investigation of corruption reported by the UN panel of experts among British mining companies in the DRC, many of whom also have strong relations with politicians and political parties (see Feeney 2006). Some argue that efforts to investigate and prosecute Barrick Gold for its numerous human rights abuses in Latin America, the DRC, Tanzania and Indonesia are stifled by its list of directors (see Snow & Barouski 2006), which includes Brian

Mulroney, former Prime Minister of Canada, Edwards Neyes, former US ambassador to Canada, former US Senator Howard Baker, Trevor Eyton, a member of the Canadian Senate, and Vernon Jordan, one of Bill Clinton's lawyers.

Similarly, the investigation led by Eva Joly into the huge corruption scandal involving French oil company Elf Africaine in West and Central Africa took several years and implicated a network of senior French politicians, many international banks, several African leaders and international oil traders. Not only was information and evidence for this investigation routinely blocked by the French authorities and international banks, but more ominously Eva Joly received death threats, meaning that she eventually required police protection and an armoured car. It is also alleged that those implicated in the scandal used

Inadequate whistleblower protections mean those with critical information are unlikely to risk approaching the authorities

their power in the French media to discredit the investigations. Because of these difficulties, the resulting prosecutions were only partially successful: Shaxson suggests Eva Joly and her colleagues only managed to reveal the 'murky tip' of the dirty iceberg (2007:93). The most senior politicians, including two former presidents were legally protected from any prosecutions.

Successful litigation against foreign companies in developing countries becomes even less likely owing to the perverse contractual agreements between companies and governments,

which may provide legally binding protection against criminal or civil charges. These contracts are known by many names, including Foreign Investment Contracts, Bilateral Investment Treaties, and Host Government Agreements. Such agreements are supported on the grounds that they provide essential protection for foreign investments, reducing the potential for rent seeking in host countries and sudden changes in government policy that may undermine investment revenues. Those critical of these contracts claim they are short-term solutions to legal uncertainty and by circumventing national legislation they indirectly retard domestic legal reform (see Daniels 2004). In addition, as argued by Hildyard (2005:12), such agreements create 'legal certainty for the companies', but 'they have been able to do so only by causing legal mayhem for ordinary citizens'.

The layer upon layer of agreements, coupled with the hybrid public/private nature of the contracts, have severely muddied the waters for redress for third parties, potentially denying citizens access to justice.

An example of such agreements was provided above in relation to copper mining companies in Zambia. In

this instance it appears that contractual agreements between the Zambian government and some companies protected the latter from being prosecuted for environmental degradation. Another more infamous example of a foreign investment agreement was between the countries of Azerbaijan, Georgia and Turkey and the consortium of companies that will build, own and operate the oil pipeline crossing their territories. This agreement trumps any national laws, replaces 'hard' laws with voluntary corporate guidelines, exempts the companies from being liable for human rights abuses, and binds the three governments to compensate the companies for any changes to national laws, including those aimed at improving human rights or protecting the environment, if these laws affect the profitability of the oil project over a 40-year period. In this way, not only does the agreement exempt the companies from litigation, but it also places a strong disincentive for improvements in governance and standards of human rights (Hildyard 2005:10). Some experts argue that such contracts between multinational mining companies and governments are one of the most restrictive elements for prosecutors (see Ayine et al 2005). However, this issue is missing from much mainstream literature on corruption and therefore seems to be overlooked by policy makers.

If we need further reason to feel despondent about the potential success of litigation in combating corruption between multinationals and political elites, then we can consider evidence that US firms operating in Indonesia have devised ingenious ways of paying bribes that circumvent OECD anti-bribery laws, as well as the US Foreign Corrupt Practices Act. Such strategies not only diminish the potential of criminal justice, but also reassure investors that their investments will not be vulnerable to scandal:

What is startling has been the discovery that some of these sophisticated payment mechanisms – as deployed by US investors to obtain infrastructure concessions – had been vetted by well-respected US law and accounting firms as part of the investor's due diligence prior to committing funds, and reported to the US Securities and Exchange Commission, without objection (Moran 2006:3).

Whether caused by political or technical factors, there is no doubt that only a nominal proportion of corrupt activities in the extractive industries are reported. We do not have the necessary data, but it is likely that few of these known cases will lead to investigation, and the proportion of the investigations that lead to meaningful prosecution will in all likelihood be very

small. Most cases where companies expect to be found guilty will end in a plea bargain, and the guilty parties will be able to afford these payments with relative ease. As Hawley (2005:6) writes:

It is telling that there have been very few prosecutions for bribery since the OECD Convention on Combating Bribery came into effect in 1999. Even in the US, prosecutions are few and fines for companies comparatively low. In the UK, there have been over 40 allegations over the past few years, not a single prosecution and only a handful of investigations. Until 2005, the laws in the UK were essentially not being enforced in any way, with lack of government resources and prioritisation sending the message to law enforcement agencies that this was not an issue to be taken very seriously.

In theory effective transparency may undermine the possibility for corruption and weaken the environment in which it thrives

In short, there seems to be limited scope for litigation and prosecutions to reduce corruption in the extractive industries, given not only technical and capacity challenges, but also the various political forces that hinder investigations. We may see a strengthening of the political will of governments to punish those involved in corruption in the future. However, far more high-profile cases must end in meaningful punishments if corruption is to be deterred.

### The fallacy of 'transparency'

Litigation can be viewed as a reactive response to corruption as it occurs after the criminal act has taken place. The recent international efforts to create 'transparency' in the extractive industries should be considered as a more proactive response. In theory effective transparency may undermine the possibility for corruption and weaken the environment in which corruption thrives.

The notion that transparency is critical for combating corruption is one that gained momentum during the late 1990s, partly owing to the work of TI. The UK NGO, Global Witness, is credited with applying pressure for transparency in the extractive industries specifically, and is one of the key NGOs driving the coalition of more than 190 civil society groups worldwide who campaign for the mandatory disclosure of payments made by multinational companies to host governments, known as Publish What You Pay (PWYP). Progress at inter-governmental level is attributed to British Prime Minister Tony Blair, who established the Extractive EITI. This was later given support by the G8 summit at Evian in 2003. Whereas PWYP was aimed at demanding financial information from companies, EITI takes a broader

approach by including the need for host governments to disclose information on their revenues – Blair argued that PWYP must be joined with ‘publish what you earn’. In those countries that are now implementing EITI, this involves a multi-stakeholder approach, led by the government, but including the active participation of local civil society groups and private companies. It is also important to recognise that EITI provides guidelines for creating national legislation and procedures rather than strict rules. We therefore find that countries have responded to EITI differently. Nigeria, for instance, is in the process of passing legislation governing the Nigerian Extractive Industry Initiative, which is unique.

Although PWYP began before EITI, the latter has now become the dominant channel to effect transparency in the extractive industries, with the PWYP movement working closely with both national governments and the EITI Secretariat. Partly due to its engagement with governments and its less confrontational approach, EITI has gained a legitimacy and momentum that PWYP does not have. Indeed, the World Bank and the IMF now strongly support EITI, claiming that they favour investing in mining ventures occurring in countries that have joined this initiative.

The broad objective of creating transparency in the extractive industries is therefore well supported and is now one of the most important international policy developments designed to make this sector promote pro-poor outcomes. There is little reason to argue against transparency in principal as the concept is critical to notions of democratic governance – citizens should have the right to know how much wealth is being created by the exploitation of their natural resources and they should know how their governments are spending the revenues. Yet whether existing measures to create transparency will be effective in combating corruption (and ultimately improving human development) is open to doubt. It is beyond the scope of this essay to provide a detailed critique of the progress of EITI in all African countries. Moreover, as this initiative is still being developed and improved on it is perhaps too early to be sure of its success. However, a number of serious challenges can be acknowledged at this stage.

A first critical point about transparency initiatives is the limited range of corrupt practices that they attempt to combat. EITI is aimed at providing citizens with independently audited information on the amount of money passing from companies to the central government. In theory the process of generating this information will restrict the opportunity for embezzlement by governments and it is possible it will limit the potential for large bribe payments to go unnoticed. However, as this essay has shown, there is

much more to corruption than embezzlement and bribe payments. Transparency of revenue flows, no matter how detailed and accurate they are, will reveal little about the political economy of corruption: the way in which conflicts of interest affect policy decisions, or the myriad ways whereby companies may capture the state, such as through political donations, for instance.

EITI can therefore only be presented as a partial response to corruption. Corruption experts at the World Bank have argued that combating state capture requires a much broader response to corruption than is typically considered by policy makers, and in such a response transparency is but one of the constituents:

In countries with such a captured environment, the focus of efforts to combat corruption and improve governance needs to shift from a narrow emphasis on passing laws and rules, and on procedures within the public administration, to a much broader agenda of greater political accountability, transparency, independence of the media, monitoring and diagnostic surveys (as checks and balances from civil society), as well as the establishment of effective mechanisms through which the voices of citizens and users of public services can be heard. (Hellman et al 2000:33)

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Even if it is acknowledged that transparency may tackle a limited range of corrupt activities, it is also important to recognise that achieving transparency in the extractive industries is far from being a straightforward technical exercise. Critics of EITI point out that the reality is far more complex than is often assumed, and there are numerous loopholes and inadequacies to the process. For example, Nicholas Shaxson, the author of country reports on Angola and Gabon for the Economic Intelligence Unit, points out that in the oil industry the scope of PWYP or the EITI does not cover certain investment costs that are highly conducive to bribe payments (Shaxson 2007:167). He cites one industry expert who claimed that it is an illusion to think the EITI or PWYP will ‘reveal anything about bribes’. Likewise, it was surprising to some that despite the Chad-Cameroon oil project being hailed as a ‘model’ of best practice by the World Bank, signature bonuses were not subject to scrutiny under its guidance (Gary & Reisch 2005). Moreover, while the focus so far has been on tracking the flow of payments from companies to governments, such information requires access to corresponding contracts if it is to be rendered meaningful. However, many of the contracts signed between companies and governments remain secret. Indeed, a paper prepared by the International Institute for Environment and Development points out that



foreign investment contracts remain clandestine and calls for their public disclosure have been ignored (Ayine et al 2005).

What is important to recognise is that although many key beneficiaries of the extractive industry endorse the notion of transparency, there are strong reasons why companies, investors and national governments may wish to carefully control the flow of information on oil and mining. To quote Shaxson again:

The prices of crude oil and its refined products all flicker up and down absolutely, and relative to each other, minute by minute, responding to weather, geo-political tensions, and many other factors. Traders constantly try to manipulate the markets in their favour, and to stay ahead of their competitors they gather detailed political and economic intelligence about the countries that sell them oil. Western governments sometimes help them; sometimes it is hard to know where the world of spies ends and the world of oil begins. The job [reporting on oil in Africa] taught me that the oil trade is, as much as anything, about information: whoever knows the most makes the most money. The huge complexity of energy markets, and the benefits that market participants can derive from their secrecy, partly explain why it is so hard to bring about transparency in the oil industry. Corruption abounds (2007:64).

What Shaxson tells us is that secrecy is an embedded and strategic characteristic of the global oil industry. It may thus be naïve to imagine all players will actively engage in the sharing of information. In agreement with this argument, Florini (2000:8) warns that transparency may not be as benign as it is often assumed:

For those on whom the spotlight shines, transparency can threaten more than mere discomfort. It is not wise to assume that international organisations, governments, firms, financial markets, NGOs, and others necessarily want to use information solely for the public good or for mutually beneficial economic exchange. In arms control, the same information that reassures others that your military forces are not massing for attack can enable those others to locate and attack your forces. In economics, misinterpretation or deliberate misuse of information by national or corporate rivals can spark unfavourable headlines, plunges in stock prices, and capital flight.

Transparency also relies on third parties being able to process and understand data. EITI requires this information to be approved by independent auditors, working on fairly restricted time frames, and EITI strongly promotes the active engagement of African civil society organisations who provide both an oversight function and should sustain pressure on governments and companies to remain committed. However, it remains unclear whether independent auditing firms, and civil society groups, have the time and resources to dig deep enough into revenue flows of the extractive industry to fully expose malpractices. Again, as Florini (2000:9) explains, the challenge is not only posed by insufficient data: *too much* disclosure can produce a white noise effect, 'making it difficult to know what is significant or even to have the time to sort through all the data'. Florini goes on to speculate, 'if you really want to hide information, the best thing to do is to bury it in a flood of data'. It is revealing to consider that investigations led by Eva Joly into the corruption scandal involving Elf Africaine took several years and were continually thwarted by the institutional secrecy that exists within the global banking industry (see Shaxson 2007:82–102). This would suggest gaining access to financial information, and making sense of it all, is extremely difficult. Again, because EITI remains bound by national borders, the true complexity of corruption is obscured. In their damning study of oil extraction in Nigeria, Andy Rowell and his colleagues argue:

### Transparency relies on third parties being able to process and understand data

It would take years for accountants to pick through the myriad of company structures and complicated tax networks to see just how much money the international oil companies have made at the expense of Nigerians. The network spreads from London to Jersey, Switzerland to Washington, Bermuda to Bonny (2005: 169).

We can also raise concern regarding the critical role that African civil society should play in the EITI process. Although it would be precarious to generalise, one fear is that in a multi-stakeholder process driven by governments that have historically shown questionable respect for civil society, non-governmental organisations will continue to struggle for legitimacy and influence, even though on paper they seem to have power. Moreover, the role of civil society should be to offer a strong independent voice, one that must be able to be critical of governments and companies when the need arises. To what extent critical civil society groups will be sidelined in favour of more conservative ones is a matter that requires further research and monitoring. So too is the

depressing potential for civil society groups to be undermined by corruption and rent seeking themselves. For example, Chad's President Déby has previously managed to get allies, including his brother-in-law, employed on the joint government-civil society oversight committee set up by the World Bank to monitor the spending of oil wealth in Chad (Gary & Leisch 2005).

To make matters more complex, the possibility remains that, despite being active members of EITI, companies and governments engaged in corrupt activities will simply provide false information. Unless levels of policing rise dramatically and become highly invasive, there may always be methods available to corrupt parties to circumvent the rigours of disclosure and any drive for greater transparency will be matched by novel ways of hiding corrupt practices, which others will not predict. In this respect corruption appears no different from other forms of criminality that have tended to respond to new strategies, legislation and technologies by keeping 'one step ahead of the law'. Transparency therefore does not guarantee that information is accurate, nor does it diminish the need for closer scrutiny of facts. What follows is that in the worst-case scenario, transparency that claims to be effective but is not, may posture as a strong endorsement for those who are engaged in corruption. The mistaken stamp of approval becomes a distraction to further investigations or it may lull others into a false sense of security.

In summary, although the notion of greater transparency in the extractive industries is an appealing one, in practice it faces tremendous challenges. The extractive industries may be impervious to the scrutiny of outsiders and the way in which transparency has been conceived leaves many aspects hidden, including not only investment costs and contracts, but also the extraordinarily complex international flows of money through tax havens and Western banks that are concealed by banking secrecy laws. As stated above, EITI is in its relative infancy so we must presume many of the challenges it faces will be recognised and addressed in the future. Thus, it may be premature to dismiss it as ineffective. Moreover, the real value of EITI may surface in less obvious ways, such as the potential for the EITI process to open space for civil society organisations to tackle further concerns in the extractive industries. In Sierra Leone, for example, the government and civil society coalition developing their version of EITI have included matters relating to the environment and mining, which is a positive move that may not have occurred if it was not for EITI.

## **Combating corruption for what ends?**

Thus far this paper has considered some of the factors that undermine efforts to reduce corruption in the extractive industries. We now turn to a more fundamental debate, involving the relationship between combating corruption, on one hand, and achieving human development, on the other.

Let us begin this final part of the paper by accepting that an increasing number of influential commentators, including the World Bank, the UN, Western Governments and numerous international NGOs, assume that a resource curse is evident in Africa and that one of the most important explanations for this is corruption and 'bad governance'. Thus, what follows is the idea that if African countries can improve their level of governance (achieve 'good governance'), then

mining and oil production will be more beneficial to their citizens. Implied in this is that the resource curse is not insurmountable and resource exploitation represents a massive potential for Africa and that associated industries therefore *must* be pursued. This is what we can refer to as an orthodox view and it has elevated combating corruption to the point that it is considered the most pressing concern for both African governments and the international community. This orthodoxy is problematic for several reasons.

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## **Combating corruption to eliminate the 'resource curse'?**

It is not entirely clear what 'problems' corruption in the extractive industries causes and this is a matter that needs more scrutiny. The tendency in the international literature is to blame corruption for a 'resource curse', but as mentioned in the introduction, the notion of a resource curse is far more complex and contested than many seem to acknowledge. The most important dimension of the resource curse is assumed to lie with economic growth – those countries in the developing world that are most dependent on natural resources for wealth creation grow at a slower pace than countries that are less dependent on natural resources. Corruption is blamed for this: at the least, it is presented as one of the most robust explanations, as corrupt governments plunder resources and they create an environment that does not attract foreign investment.

Corruption is hard to define and measure, making this theory linking corruption and economic growth difficult to substantiate. We can consider the fact that many countries with high levels of perceived corruption have enjoyed periods of economic growth, such as those in Asia and some resource-dependent countries in Africa

now, like Angola, whose recent economic growth has been impressive. We should also recognise that evidence for the poor relationship between the extractive industries and economic growth in general remains highly disputed (Lederman & Mahoney 2007). Key variables are open to differing measurements, an increasing literature suggests that correlations between resource exploitation and economic growth may be spurious, and there are many studies showing a *positive* relationship between extractive industries and economic growth (Lederman et al 2007). It is certainly difficult to know what the true relationship between resources and economic growth is, so while corruption in developing countries that are highly dependent on natural resources for wealth creation *may* cause disappointing economic growth, the evidence is far from conclusive.

More important, however, is that although economic growth can be presented as the most important goal for developing countries, there are many other problems that stem from the extractive industries, which are not 'growth related'. Mining and oil production cause profound environmental consequences and the long-term costs are extremely difficult to contemplate or measure. Likewise, decades of research has shown that industrial mining tends to be highly disruptive for local communities, causing insecurity, relocations and marginalisation of indigenous peoples, particularly women. Despite considerable attention to corporate social responsibility programmes, there are few cases showing that mining and oil have the potential to develop local communities in a sustainable way. These other negative impacts of extractive industries may co-exist with a period of economic growth created by mining or oil production, meaning it may be too simple to imagine the extractive industries are *either* a blessing or a curse. Such industries may be both 'good' and 'bad' simultaneously, and whether the negatives outweigh the positives is a question that may require subjective considerations.

Any policy that is designed to 'improve' the impact of resource exploitation may therefore be based on contradictory outcomes, but this is rarely acknowledged when fighting corruption is presented as a cure for the resource curse. We need to ask what the priorities are behind combating corruption in the extractive industries – to foster economic growth and secure the supply of commodities in global demand, or to protect the environment and the well-being of indigenous people, for example? This is a vital question to ask for it indicates what measures of success should be used for anti-corruption initiatives. If anti-corruption initiatives help to grow the extractive industries, should

we temper any joy with the realisation that the environmental consequences will be severe?

### Combating corruption to promote corporate interests?

In discussing the conceptualisation of corruption, this paper has attempted to sketch its multi-dimensional aspects. A distinction was made between corruption that represents the 'grabbing hand of the state', and corruption that represents illicit influence on the state by third parties (so-called 'state capture'). Although we can imagine different scenarios where one form of corruption may dominate, these two forms of corruption are not mutually exclusive and corrupt activities may occur to the mutual benefit of all parties directly involved. Moreover, owing to conflicts of interest, such as government officials having direct stakes in private companies, there can be

a blurring of the divide between the state and the private sector. We can therefore see that corruption is not a uniform malaise but a concept that covers a very wide range of activities. This is one reason why single scores given to countries for their levels of corruption, such as those published by TI, are misleading and lack validity. Such scores give the impression that corruption is the same everywhere, albeit existing at different levels of magnitude.

From the discussion so far on the nature of corruption, we can also detect how the interpretation of corruption may be ideological. If corruption is narrowly

understood as the abuse of public office for personal gain, then corruption may be associated with the negative impact of the state on private commerce. From this perspective, a corrupt state is one that intrudes on private business transactions, extracts burdensome rents and causes uncertainties for companies and investors. This view is not uncommon, evident in the fact that some analysts depict levels of corruption in a given country as being a risk for companies and a strong disincentive for foreign investment.

We therefore find that combating corruption can be presented as a means to increase the global competitiveness of developing countries.

However, corruption should be understood more broadly to include forms of corporate corruption and state capture, and this includes both localised forms of corruption (such as those occurring between companies and communities living near mining areas) and international forms of corruption (such as those occurring between home governments, host governments and multinational companies). In adopting this broader view of corruption that salient theme is how the power of third parties undermines

We need to ask what the priorities are behind combating corruption in the extractive industries



democratic governance. In other words, in contrast to seeing corruption primarily as a hindrance to free market dynamics, it should also be viewed as integral to the weakening of the nation state and the domination of policy by those with economic power; a corrupt state is one where there is an excessive fusing of wealth and power, to the detriment of democratic representation.

Although presented somewhat simplistically here, such differing views of corruption become critical in relation to policy analysis and formulation. The first view of corruption – that it is primarily a hindrance to the free market – is complementary to broader policies of economic liberalisation and privatisation. This appears to be the orthodox understanding, advocated by many leading international organisations. Thus, as Michael Johnston writes:

...the consensus worldview [has] converged at a global level to influence both corruption and the ways we understand it. Corruption has come to be seen as both cause and effect of uneven or incomplete economic liberalisation, and of an intrusive, inefficient state. Rank-ordering countries from high to low corruption effectively defines the problem as the same everywhere, and its scope and effects are judged primarily in economic terms. Reform is seen as moving societies toward a neo-liberal ideal of market economics, and market-like political processes, facilitated by a lean, technically competent state that is little more than a kind of referee in the economic arena (Johnston 2001:17).

However, the second view of corruption – that it describes a threat to democratic governance – suggests different policy ideas, and these may contest neo-liberal economic dogma and the advancement of corporate-led globalisation. At least, in explaining the threat of corruption and its possible rise in importance, policies that have been referred to as the Washington Consensus may be considered as one of the critical driving forces of the problem as it manifests in many African countries today.

The most important policy initiatives that attempt to combat this second and more nuanced interpretation of corruption should be aimed at restricting the power of multinational companies and simultaneously increasing citizens' control over decision-making processes. To achieve this would mean tackling banking secrecy and tax havens, for these provide the environment for corruption and criminality to exist with impunity. Moreover, a critical policy goal would be to better regulate the interaction between private companies and

public office, including attention to party-political funding and the dilemma of the 'revolving door' syndrome and related conflicts of interests.

Therefore, there is a critical question confronting those who champion combating corruption in the extractive industries: Are anti-corruption initiatives designed first and foremost to promote the interests of private capital, or are they to promote the norm of democratic governance and perhaps deliver justice to citizens of African countries who have too often seen their natural resource wealth plundered by a combination of corrupt leaders and callous multinationals? It is perhaps plausible that some existing anti-corruption initiatives, such as the PWYP campaign or EITI, manage to achieve both goals simultaneously. More likely however is that there are fundamental tensions between these two objectives, and policies aimed at combating corruption will not serve different political or 'developmental' agendas equally.

### **The significance of corruption**

Attempting to isolate the impact of corruption in the extractive industries is tremendously difficult. Perception surveys and ad-hoc evidence provide an impressionistic view of the levels and dynamics of corruption, and the truth of the matter is that beyond this our knowledge is quite poor. This is to be expected, as the activities, behaviours and transactions subsumed under the heading of corruption are not easily

quantified. However, the recent drive to combat corruption in the extractive industries is based on a confidence that corruption is a major cause of problems. No doubt underestimating the importance of corruption will be seen as a threat to some. However, less importance is given to the opposite risk: that the problem of corruption is exaggerated, and in doing so other factors that explain disappointing outcomes of resource exploitation are given less scrutiny and priority. In his book *Why governments waste natural resources*, Willem Ascher (1999: iv) argues:

The easiest way for a political scientist to seem penetrating and tough-minded is to "model" the behaviour of political leaders as self-interested people out for power, personal financial gain or both. This presumption has arrested the development of political analysis of natural resource policy failures, because the "easy" explanation of resource destruction as the result of pandering for political support or simple corruption is all too easy. Someone benefits from virtually every government policy or action, so it is easy to dismiss

Policies aimed at combating corruption will not serve different political or 'developmental' agendas equally

unsound policies as politically or financially motivated payoffs.

This is not to say that corruption does not play a role in causing negative outcomes of mining and oil production. There is considerable evidence showing that corrupt and criminal activities have flourished in the extractive industries in Africa and these can be linked to social and environmental harm. However, without considerable research into the political economy of resource exploitation, it may be difficult to be certain whether the negative outcomes of resource extraction are caused by corruption, bad policy, human error or other non-corrupt reasons. As noted above, 'state capture' may lead to highly favourable policies for private companies, such as reduced tax burdens or lower standards of environmental safety. But equally governments, acting on the advice given to them by inter-governmental organisations, may chose similar if not identical policies in their bid to attract foreign investment.

Similarly, while we presume that elite level plunder, conflicts of interest and forms of corporate corruption must surely increase the inequitable distribution of resource wealth, it is not certain that under less corrupt regimes money from oil and mining would promote equality and pro-poor wealth creation. Indeed, those disapproving of corporate-led globalisation may wonder why so much effort is given to increasing 'transparency', because the global inequitable distribution of wealth, which could be viewed as one of the major scandals of the international extractive industry, is not difficult to see.

Here lies one of the uncomfortable problems with existing efforts to promote 'good governance' and create greater transparency in the extractive industries, for they say little on what companies *should* pay and what proportion of the wealth accrued by exploiting natural resources should be redistributed to citizens. Africa would certainly benefit from more access to information, and for this reason initiatives such as EITI and PWYP are to be supported. But transparency should not be mistaken for social justice. This is an argument put forward by Andy Rowell, James Marriott and Lorne Stockman in their book on West African oil, *The next gulf* (2005:186–187). They argue that the tendency to claim that 'transparency' is a panacea for the resource curse is highly problematic and distracts attention from more fundamental problems of the governance of African resources. According to the authors this was also a view of Oronto Douglas, the then-Commissioner for Information for Bayelsa State in Nigeria, who left the EITI movement on the grounds that 'It is absolutely not right if someone says that if oil is transparent, then everything is going to be OK.'

Andy Rowell and his co-authors suggest, 'Just as "greenwashing" is the impression of environmental

responsibility, this "cleanwashing" could be the impression of financial responsibility and transparency'.

## Conclusion

Africa is experiencing tremendous growth in the extractive industries, which is intensifying interest in the notion of a 'resource curse'. It would seem that a critical concern shared by a number of stakeholders relates to corruption, as this is thought to be a major factor in explaining why African countries do not seem to benefit as much as they should from their endowment of natural resources. This paper has attempted to explain what corruption means in the extractive industries and has argued that it is multi-dimensional, representing a complex, as well as contested, set of relations between companies, African governments, foreign governments and perhaps inter-governmental organisations as well.

While there is strong reason to feel that reducing corruption should be an important goal in improving the governance of Africa's resource extraction, there are several critical issues which challenge the idea that combating corruption will cure the resource curse. Part of the problem is that existing efforts to combat corruption face profound technical and political challenges. Many important forms of corruption, such as 'state capture', appear to be overlooked entirely and therefore remain part of the status quo.

It is also unclear what ends combating corruption serves. The notion of a resource curse is deceptive, for if reducing corruption helps promote economic growth and it helps promote further expansion of the extractive industries, other problems, such as environmental degradation, may intensify. Extractive industries can be simultaneously a blessing and a curse for African countries, depending on what one considers important. Furthermore, while combating corruption may be supported by a wide range of stakeholders, the concept can be interpreted in different ways and therefore combating it may be used to support rival developmental agendas. An orthodox view seems to compliment neo-liberal economic policies, but for others, combating corruption may mean challenging core principals of corporate-led globalisation. That a critical discourse on corruption in the extractive industries has yet to materialise from those on the political left seems surprising.

Finally, the paper has argued that the danger in elevating corruption as being the most important goal in improving the governance of Africa's natural resources lies with 'crowding out' other concerns. Of course, to what extent corruption is the cause of problems in the extractive industries depends on ones view of the concept. Yet reducing corruption, however one defines it, should not be seen as a guarantee that mining and oil production will promote human development in Africa. In this respect, claims that greater transparency of revenue flows will go a long

way to reversing a resource curse may be superficial and misleading. The accusation of 'clearwashing' by governments and companies is perhaps one that will

## Notes

- 1 Although others suggest that financial speculation is playing its part in raising commodity prices, and we may therefore see price volatility in the future.
- 2 The Metals Economic Group provide annual surveys of exploration trends. These can be sourced at [www.metalseconomics.com](http://www.metalseconomics.com).

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be heard more frequently in the future, particularly if the contribution made by oil and mining to African countries fails to improve.

- 3 Collier (2005) notes that the influence of resource wealth in promoting corruption and authoritarian government encourages comparison with the impact of foreign aid, but he argues that there are several reasons why aid is less corrupting than oil revenue.
- 4 Interview with author, June 2007. The ISS will be publishing a detailed case study on titanium sands mining in Kenya in collaboration with the Kenyan Human Rights Commission in December 2007.

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## ANNEXURE A

Data supplied by Client Services Team, Development Data Group, The World Bank (February 2007)

### Mining and quarrying, value added (current US\$) GDP (current US\$)

	2000	2001	2002	2003	2004	2005
Angola	6 068 509 184 9 129 180 160	5 125 369 344 8 936 023 040	6 282 994 176 10 834 756 608	7 310 910 976 13 825 039 360	10 439 510 016 19 564 185 600	16 408 266 752 28 037 875 712
Benin	5 196 776 2 254 838 784	5 456 728 2 371 785 984	6 025 912 2 807 357 440	8 430 833 3 557 983 488	9 843 175 4 047 438 080	10 427 173 4 287 463 936
Botswana	1 810 564 480 5 250 845 696	1 825 372 416 5 183 948 800	1 886 374 528 5 423 318 016	2 643 339 520 7 736 972 800	3 045 260 032 8 973 846 528	3 173 059 328 9 350 449 152
Chad	0 1 382 908 160	0 1 702 299 392	0 1 982 261 120	290 328 256 2 670 500 352	1 584 452 352 4 306 308 608	2 393 720 320 5 468 700 672
DRC	442 275 360 4 305 797 120	344 510 016 4 690 000 384	479 515 712 5 547 137 536	490 163 744 5 671 041 024	659 517 376 6 507 524 096	817 061 248 6 973 684 224
Côte d'Ivoire	33 849 264 10 425 292 800	31 103 350 10 553 994 240	59 972 320 11 482 073 088	129 215 416 13 734 139 904	185 127 424 15 474 742 272	275 087 776 16 054 736 896
Ethiopia	35 068 240 7 845 271 552	53 999 728 7 887 815 168	61 130 752 7 335 507 456	65 057 076 7 941 708 800	76 498 944 9 732 585 472	87 450 800 11 174 291 456
Madagascar	3 063 856 3 877 533 440	3 710 210 4 529 454 592	6 179 603 4 397 127 168	7 742 574 5 473 940 480	6 206 860 4 363 847 680	7 135 343 5 039 950 848
Malawi	22 442 678 1 743 506 560	24 990 128 1 716 502 784	16 772 543 1 934 575 616	17 098 900 1 764 480 896	25 412 188 1 902 833 280	41 054 648 2 072 071 168
Mali	161 719 024 2 422 469 632	296 866 880 2 629 733 632	385 603 232 3 342 815 744	388 480 256 4 362 442 240	353 306 752 4 882 133 504	401 623 520 5 097 662 464
Mauritania	153 566 704 1 080 830 464	123 913 952 1 098 028 800	121 929 496 1 116 391 040	137 554 656 1 340 219 776	179 403 776 1 533 913 216	185 621 440 1 887 947 520
Mozambique	11 775 803 3 777 704 960	10 413 020 3 697 175 808	11 889 518 4 091 708 416	15 975 487 4 785 520 128	50 584 860 5 912 421 888	90 012 672 6 629 973 504
Namibia	376 080 704 3 413 544 704	425 484 960 3 215 936 768	433 070 880 3 121 904 896	393 258 432 4 473 231 872	593 962 880 5 712 228 864	637 005 952 6 126 180 864
Nigeria	15 774 486 528 42 078 142 464	20 045 445 120 47 999 774 720	17 376 649 216 46 710 833 152	25 373 132 800 58 294 370 304	34 026 059 776 72 053 448 704	48 579 510 272 98 950 504 448
South Africa	9 134 375 936 132 877 647 872	8 968 797 184 118 478 979 072	8 738 751 488 110 881 800 192	11 138 239 488 166 168 788 992	13 544 453 120 214 663 151 616	15 152 681 984 240 151 642 112
Sudan	952 992 000 12 366 140 416	800 802 624 13 351 198 720	1 067 490 688 15 108 610 048	1 591 357 056 17 679 949 824	2 740 819 712 21 609 275 392	4 782 497 792 27 699 433 472
Swaziland	6 080 692 1 388 703 232	4 019 050 1 259 856 000	4 487 241 1 191 537 792	6 662 261 1 906 464 000	8 823 529 2 517 383 936	9 570 514 2 730 501 376
Tanzania	124 335 032 9 079 262 208	137 440 240 9 440 939 008	158 266 256 9 772 041 216	202 783 072 10 290 950 144	255 442 128 11 310 740 480	257 556 240 12 111 044 608
Togo	47 754 152 1 329 110 400	36 287 244 1 328 031 232	50 216 060 1 476 122 496	105 127 320 1 758 946 944	136 479 408 2 061 009 536	146 359 584 2 202 787 584
Uganda	40 343 360 5 926 373 888	41 805 540 5 681 242 624	45 766 432 5 848 215 040	46 511 344 6 254 794 752	47 185 560 6 822 182 400	67 978 200 8 711 725 056



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## About this paper

It is now well accepted that the extractive industries in many African countries fail to promote human development. An increasingly influential explanation is that poor governance and corruption in Africa are both cause and effect of this so-called 'resource curse'. Combating corruption in the extractive industries in Africa has therefore been elevated as a priority by a range of stakeholders, including Western governments, corporations and civil society coalitions. This paper critically considers this development. It not only suggests that existing anti-corruption measures and transparency initiatives may well have limited impact, but also argues that corruption is a contested concept, one that can be used to advance different political and economic agendas.

## About the author

Andre Standing has been working at the Institute for Security Studies since November 2006, where he is currently leading the project on the governance of Africa's natural resources. Prior to this time he was conducting fieldwork research for his PhD on organised crime in South Africa. He has authored a recent book published by the ISS on gangs and organised crime in Cape Town.

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