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**Building Peace With Conflict
Resources? Analysing The
Impact Of The Management of
Resource Concessions For
Good Governance In Post-
Conflict Liberia And The
Democratic Republic Of The
Congo**

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List of Acronyms

ADF	Allied Democratic Forces
AFDL	Alliance of Democratic Forces for the Liberation of Congo-Zaire
ANEP	National Association of Public Companies
ArcelorMittal	Mittal Steel Holdings N.V.
CCRC	(Liberia's) Contracts and Concessions Review Committee
CENCO	Congolese National Bishop's Conference
CEPAS	“Centre d'études pour l'action sociale”
CPA	Comprehensive Peace Agreement
DRC	Democratic Republic of the Congo
ECOWAS	Economic Community of West African States
ELI	Environmental Law Institute
FARDC	Armed Forces of the Democratic Republic of Congo
FAZ	Zairian National Army
FEC	Federation of Congolese Enterprises
FDLR	Democratic Forces for the Liberation of Rwanda
Firestone	Firestone Natural Rubber Company LLC
GDP	Gross Domestic Product
GEMAP	Governance and Economic Management Assistance Program for Liberia
ICD	Inter-Congolese Dialogue
IMCC	Inter Ministerial Concession Committee (of Liberia)
INPFL	Independent National Patriotic Front of Liberia
ISLP	International Senior Lawyers Project
LRA	Lord's Resistance Army
LURD	Liberians United for Reconciliation and Democracy
MDA	Mineral Development Agreement
MODEL	Movement for Democracy in Liberia
MONUSCO	United Nations Organization Stabilization Mission in the DRC
NALU	National Army for the Liberation of Uganda
NGO	Non- Governmental Organization
NPFL	National Patriotic Front of Liberia
NRGI	Natural Resource Governance Institute
NRM	Natural Resource Management

NTGL	National Transitional Government of Liberia
OSISA	Open Society Initiative for Southern Africa
PCNRM	Post- conflict Natural Resource Management
PPCC	(Liberia's) Public Procurement and Concessions Commission
REDD+	Reducing Emissions from Deforestation and forest Degradation in Developing Countries
RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
RUF	Revolutionary United Front
TAI	Transparency and Accountability Initiative
ULIMO	United Liberation Movement of Liberia for Democracy
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNMIL	United Nations Mission in Liberia
UNSC	United Nations Security Council
UPDF	Uganda People's Defence Force
WTO	World Trade Organisation

1. Introduction: Natural Resources, Civil War And The Relevance To Elaborate The Role Of Natural Resources For Post- Conflict Peacebuilding

Natural resources can be a blessing or a curse for states, its people and their peace. But especially in Africa, many countries are not profiting from their natural resource wealth, but struggling with violence and war. „Our nation is blessed with an endowment rich in natural [...] resources. Yet, our economy has collapsed due to the several civil conflicts and economic mismanagement by successive governments” stated the President of Liberia Ellen-Johnson Sirleaf in her inaugural Speech in January 2006 (Sirleaf 2006). Liberia is just one example of a state, experiencing this paradox of resource wealth and civil war. Hence there have been several debates in the literature of political science around natural resources and war within a country.

Continuing through the 1990s the *resource curse* thesis was founded by Richard Auty. He sought to prove that natural resource wealth more often leads to poor economic development and usually results in “bad“ social and political outcomes, like civil wars, than in resource deficient countries. There are several examples, which support the argument, that natural resources are often fuelling civil war and bad governance rather than creating prosperity for the benefits of all people (Auty 1993). This strand of scholars focus on abundance of and dependency on natural resources or the *resource curse*¹ or *paradox of the plenty*² as a central factor for civil war (e.g. Auty 1993; Karl 1997; Collier/Hoeffler 1998). In contrast, early research around violent conflict and the environment including natural resources was focusing on scarcity as a possible driver for conflict. Especially when these disputes over access of limited resources occur around divided social lines, such as religion, class and ethnicity (Frerks et al. 2014: 21). But further research could not find a direct link between scarcity or environmental degradation and violent conflict (Conca/ Wallace 2009: 488).

These debates have occurred since the 1990s and the end of the Cold War alongside several empiric observations that the characteristics of war had changed. Wars are broader proliferated over the whole world, and the majority of wars are taking place in the developing countries (Bruch et al. 2009). Further, the dynamics of warfare have also changed. This development drove several scholars to a new concept, underlining new dynamics of war: 'from old wars to new wars' (Duffield 2001; Kaldor 2001; Münkler 2005). The majority of wars are now intrastate than interstate wars and

1 The concept of resource curse was introduced by Richard M. Auty 1993. “At its broadest, the phrase resource curse refers not only to poor economic development, but also to other negative political and social outcomes that have been associated with abundant natural resources, including detachment from the electorate and increased risk of armed conflict” (Rustad/Lujala 2012: 8, fn. 7).

2 The phenomenon of the *paradox of the plenty* was named by Terry Lynn Karl in 1997, demonstrating especially why the performance of governments of oil-rich countries has often disappointing development outcomes. For more see Karl (1997).

consequently, 'new' actors are fighting for power over the state. In most cases, these players consist of a state actor and one or more non-state actors, like rebel or separatist groups. This shift not only has several implications for the impact of war on civilians, but also the environment and its funding. Because the civil war takes place within countries borders, battles often happen in the whole territory and therefore intrastate wars harm more civilians (Bruch et al. 2009: 58, 59). This is not only impacting the increasing number of civilian deaths or violence against them, but also the destruction of their livelihoods and the environment (Young/ Goldman 2015: 2).

Even though there is no consent in the literature regarding the role resources play in a civil war, there are three major relations between natural resources and intrastate wars (UNEP 2009). Firstly, grievances, like the unequal distribution of natural resources and benefits or negative impacts of resource exploitation, can directly increase the risk of conflict (Rustad/ Lujala 2012: 7; UNEP 2009). Focusing on this aspect there was a widespread debate in the literature whether greed, the “profitable opportunities” for rebellion (Collier/Hoeffler 2004: 564) or grievance can be a driver of violent intrastate conflict. Second, there is some evidence that the (illegal) exploitation of natural resources, on both combatant sides as a mean to fund the war, sustains and prolongs battle (Nietzschke/ Studdard 2005). Thirdly, some individual actors might hollow out the prospect of peace, because these so called 'peace spoilers' do not want to lose access to natural resources and their revenues (UNEP 2009: 11; Rustad/ Binningsbø 2012). This goes along with the finding that the prospect of personal enrichment through the exploitation of natural resources can be a motivation to start rebellion or to join a rebellion movement (Rustad/ Lujala 2012: 8).

In the recent debate there is an emerging consensus:

“The environment and associated factors like environmental degradation, resource scarcity and more recently climate change, do or may play a role in the rise and continuation of conflict, but are seldom the only or most important factor” (Frerks et al. 2014: 17).

Further, there is consensus that there is a connection between natural resources and civil war (Töpfer 2012). Several findings suggest that at least 40% of all civil wars since the end of the Cold War are associated with natural resources, like high-value natural resources, such as oil, gas, minerals, gemstones and timber (UNEP 2009: 8). The United Nations Environment Programme (UNEP) underlined that civil wars associated with natural resources are twice as likely to relapse into conflict again, within the first five years (UNEP 2009: 5).

But why are so many resource- rich countries not able to achieve a long lasting peace and what can be done? As shown, a vast of literature is centred on the connection of civil war and natural resources. However, regarding the consequence of a link between civil war and natural resources for post-conflict peace, the scientific debate is still in early stages, but growing. The UNEP for

example, began a wide research on this issue, suggesting starting points to include natural resources in the principles of post- conflict peacebuilding. Accordingly, the offered pillars of opportunities to integrate natural resources in peacebuilding are “Supporting Economic Recovery”, “Developing Sustainable Livelihoods” and to incorporate natural resources into “Dialogue, Confidence Building and Cooperation” (UNEP 2009: 31)³. But there remains a lack of knowledge and consensus regarding how the foundations for a long lasting peace and development after those conflicts associated with *conflict resources*⁴ could be built (Conca/ Wallace 2009: 486). Although, a growing body of scholars are acknowledging that well managed natural resources might strengthen peace, „we still know very little about how such reforms are shaping postconflict peacebuilding“ (Beevers 2010: 3). Hence, it is highly relevant to provide further research in the field of the incorporation of *conflict resources* for building peace.

For the purpose of this study, the focus should lay especially on the good governance dimension of peacebuilding. Hence based on the UNEP data⁵, the question of the following study will be:

“To what extent is the management of resource concessions fostering legitimacy, transparency and sharing of benefits in post- conflict Liberia and the Democratic Republic of the Congo (DRC) as principles of good governance?”

The management of resource concessions entails the allocation and management of existing and future concessions and their compliance (African Development Bank Group 2014: 18). However, the focus of the following work will be on the review, renegotiation or cancellation process of (existing) natural resource - especially mining- concessions awarded during civil war or the transitional period. Hence, not aspects of their implementation nor the establishment of regulation policies will be analysed. As a matter of this study, the concentration will focus on the national, governmental reappraisal process of resource concessions, rather than processes started by NGOs or other international actors.

The management of existing and new natural resource concessions can be difficult, especially in post- conflict states. Several risks, like the presence of corruption, a lack of capacities and the eager to jump-start the economy, might make it difficult to promote a sustainable and efficient management of concessions (Le Billon 2012: 71).

„However, failure to adequately address processes related to exploration, exploitation rights, contracts and concessions can deprive the state of a considerable amount of revenue, fuel corruption, cause unnecessary environmental damage and undermine the state's legitimacy- all of which can undermine postwar economic recovery and general peacebuilding“ (Rustad et al. 2013).

That is why it is relevant to analyse the management of concessions in the context of good

3 See Appendix I.

4 For the definition of *conflict resources*, see in the following, page 5.

5 See Appendix I.

governance and peacebuilding. This question of analysis should be determined through qualitative empiric- analytical method, and concluding in comparing the two cases.

As a consequence it is relevant for the scientific debate to generate new knowledge about the management of resource concessions fostering aspects of good governance for peacebuilding, and analysing the similarities and differences of the processes in post- conflict Liberia and DRC.

Now to the explanation on how the cases are chosen. First, both civil wars, in Liberia (between 1989- 2003) and the in DRC (between 1996-97 and 1998-2003, especially the second war) are highly associated with conflict resources and are thus have a similar historical relation of natural resources and conflict⁶. Furthermore, these two cases are chosen because Liberia is seen as a good example of the management of resource concessions in a post conflict environment, whereas the DRC is seen as an example on the other end. “Liberia provides an example of relatively successful reappraisal and renegotiation, but this was not the case in the Democratic Republic of the Congo“ (Le Billon 2012: 75). Therefore it is highly relevant to analyse both of these concession reappraisal processes from a good governance perspective and examine to what extent the principles of good governance could be fostered through the processes. It is also of interest for political scientists to figure out the similarities and differences of managing these concessions and therefore find in future research possible conditions for fostering good governance through the management of such.

Turning now to the thesis structure, the first section will outline the framework of analysis. Firstly, key terms relevant for this elaboration, like the definition of natural and conflict resources, and the recent scientific debates discussing good governance, peacebuilding, natural resources and their management will be presented. In addition, the principles of good governance will be demonstrated (Chapter 2). Following that, in Chapter 3 the centre of analysis will be on the case studies Liberia and the DRC. Firstly, the for this study relevant three principles of good governance- legitimacy, transparency and sharing of benefits will be defined and adopted. Then, the Liberian war and context, with focus on the impact of conflict resources is summed up in order to analyse in the next step how the reappraisal process of resource concessions fostered good governance. Following the Liberian case, firstly the case of DRC's civil war and connection to conflict resources will be

6 As the UNEP (2009: 11) suggests, recent civil wars and internal unrest fuelled by natural resources: The Liberian civil war between 1989 and 2003 was fuelled by the natural resources Timber, diamonds, iron, palm oil, cocoa, coffee, rubber, gold and the internal unrests or civil wars in the DRC between 1996-1998, 1998-2003, 2003-2008 were fuelled by the resources copper, coltan, diamonds, gold, cobalt, timber, tin. As a matter of this study, the violence in the DRC between 1996-1998 and 1998-2003 will be in the focus of analysis, whereas the timeframe of the wars are defined in accordance to Nest (2006): First civil war between 1996- 1997 and the second war between 1998- 2003.

described and second, the review and renegotiation process of concessions will be examined. In addition, its impact for good governance will be evaluated. In the conclusion (Chapter 4) the two processes of post-conflict Liberia and DRC will be compared, analysing which differences and similarities are found in relation to the resource concession management and consequences for good governance. Further, the last chapter will sum up the results of the analysis and provide an outlook for further research.

2. The Framework Of Analysis: Defining The Key Concepts And Presenting The Debates In The Literature. An Overview

The aim of this chapter is to demonstrate the framework of analysis and hence first present the main definitions and understandings of key terms used in this study. In addition the debates in the literature emerging around post- conflict peacebuilding, good governance and natural resources or resource management will be briefly demonstrated.

2.1 Defining Natural Resources

The literature of natural resources as tools for peacebuilding is usually not providing a definition of natural resources. Therefore there is the implicate assumption that the meaning of natural resources is intuitive and there is no need of defining natural resources. Also the World Trade Organisation (WTO) acknowledged the problem of a concrete definition of natural resources, especially the existing “common sense” of what natural resources are (WTO 2010: 46). Nevertheless, for the purpose of this work natural resources are all materials provided by nature and which are generally usable for human purposes. They are embracing renewable resources, energetic resources as well as non- renewable resources⁷ (Mildner et al. 2011: p.11)⁸.

2.2 Defining Conflict Resources

Because this work focuses on one possible opportunity to integrate *conflict resources* in the post-conflict peacebuilding process in war- torn states, it is first important to understand the role these resources are playing for the conflict itself. One must understand the dynamics and relations between civil war and natural resources, before building peace with conflict resources can be

⁷ The definition was translated from German, by the author, in accordance to Mildner et al. (2011:11).

⁸ Also natural resources can be distinguished between lootable and non-lootable, having impacts on the resource exploitation and which capacities are needed for the extraction of these resources. Lootability, for example is advantageous especially for rebel movements, because they can be extracted by individuals or groups with simple mining techniques (Rustad/ Lujala 2012: 11).

elaborated. Therefore Global Witness define *conflict resources* as

„natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from, or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law” (Global Witness 2006: 10).

But following the argument of Dam-de Jong (2015: 27) also for the purpose of this study, it is difficult not only to prove that natural resources contribute to, benefit from or result in the commission of serious violations of international law, but also it might not be the case for all resources conflicts. Hence this study defines conflict resources as “natural resources whose systematic exploitation and trade finance or fuel armed conflicts“ in accordance to Dam-de Jong (ibid.). On this basis, also the oversight provided by the UNEP (2009: 11) classifying „Recent civil wars and internal unrest fuelled by natural resources“ falls under the above presented definition.

2.3 The Concept Of Peacebuilding

The concept of peacebuilding is embedded in a broad debate in the literature. Two central points around the concept of peacebuilding can be identified. First, there is the discussion about the definition of peacebuilding, which dimensions or policies the concept of peacebuilding includes and under what circumstances peacebuilding can be successful or not (e.g. Boutros- Ghali 1995; Paris 1997, 2004; Doyle/ Sambanis 2006; Barnett et al. 2007). Second, there is the question of at what point post- conflict peacebuilding begins. This is linked to discussions about what constitutes a post-conflict state as „post“, which is related to the distinction between peacemaking, peacekeeping and peacebuilding (e.g. Diehl/ Greig 2005; Doyle/ Sambanis 2006; Fortna/ Howard 2008; Darby/ MacGinty 2008).

As a matter of this study, it is first important to understand how peacebuilding is understood, especially in the research related to this study⁹ and to define, when peacebuilding begins and hence when a state is in a post conflict situation.

The concept is defined as:

„Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development“ (UNSG’s Policy Committee 2007 in: Rustad/Lujala 2012: 5).

This means in most cases, also addressing and if possible solving the underlying causes of a conflict. Peacebuilding normally takes place in a post- conflict setting. The post- conflict period is therefore defined as starting after a peace agreement or a military victory. But because these events

⁹ See e.g. Rustad/Lujala (2012: 5, 6) and Young/Goldman (2015: 3).

are often followed by a period of great instability and interrupted by (reoccurrence) of violence, empirically it is often difficult to identify the actual end of the conflict. Therefore Jensen and Lonergan define post-conflict as: „When political, security and economic discourse and actions no longer revolve around armed conflict or the impact of conflict, but focus on standard development objectives“ (Jensen/ Lonergan 2012: 2). Consequently, the concept of peacebuilding implies four pillars according to the UNEP named “Socio-economic development”, “Good governance”, “Reform of justice and security institutions” and “Culture of justice, truth and reconciliation” (UNEP 2009: 31).

2.4 The Concept Of Good Governance

This analysis focuses on the peacebuilding- pillar of good governance, and hence is not capturing the debate in the 1990s around the distinction between government and governance (e.g. Rosenau/Czempiel 1992; Rhodes 1997) from which the debate arose. However, it is widely acknowledged that good governance is one dimension (among others) of peacebuilding (e.g. UNEP 2009; Bruch et al. 2015). The term *good governance* was first established by the World Bank in 1989 speaking of a “crisis of governance” in many African states (World Bank 1989: 60, 61; Chhotray/ Stoker 2009: 99). From the beginning it was embedded in a discussion around development and peacebuilding framed by the „institutional turn“ in social sciences (Rohstein/ Teorell 2012: 16). Mainly the World Bank established good governance as a condition for developing countries receiving external- donor- aid (Weiss 2000: 801; Chhotray/ Stoker 2009: 99). This also lead to criticism, that good governance implies main aspects of democracy and hence, the western community is trying to democratise developing countries (Weiss 2000: 805; Paris 1997). The beginning of the discussion was followed by a huge debate in the literature. In contrast to the consensus in the literature that good governance does play a role for development and peacebuilding, it is on the other hand contested how important good governance is for building peace (e.g. Dornboos 2001; Nanda 2006; Smith 2007; Chhotray/ Stoker 2009). As Alao states in the context of natural resource governance in Africa, as a matter of this analysis

„governance is defined very broadly as the socioeconomic and political management of state affairs, especially as this relates to the determination of who gets what, when, and through what process. It also involves the interplay of relationships among the different actors concerned with the politics of natural resource management“ (Alao 2007: 242).

“Good“ governance hence implies for the purposes of this work, the principles of the United Nations Development Programme (UNDP) of good governance. These are seen as adequate criteria for this elaboration, because of its development in the peacebuilding context. In addition, the

UNDP- list of principles also exists in similar form in the debate in the literature around good governance. Also as Graham et al. argue, there “is strong evidence that these UNDP- based principles have a claim to universal recognition” (Graham et al. 2003: 3). Those five principles of good governance¹⁰ embrace:

- (1) Legitimacy and Voice, putting together the two aspects of Participation and Consensus Orientation (or “what is best for the interest of the group”)
- (2) the Direction or Strategic Vision which is explained by a “long-term perspective on [...]development”, and
- (3) the Performance. Performance arises from the Responsiveness, defined by “institutions and processes try to serve all stakeholders”, and the Effectiveness and efficiency, stated as “processes and institutions produce results that meet needs while making the best use of resources”.
- (4) Accountability, bringing together Accountability of decision- making actors and Transparency, meaning the (free) accessibility of information of for example processes.
- (5) the principle of Fairness, bringing together Equity and the Rule of Law (ibid.).

On the basis of the UNEP table, showing possibilities to integrate natural resource in post-conflict peacebuilding, here the included principles of legitimacy, transparency and sharing of benefits should be analysed. Legitimacy, according to the above provided UNDP- principles is obviously integrated in „Legitimacy and Voice“, transparency as a part of „Accountability“, but „Benefit Sharing“ is not, at least regarding to the exact term contained (Graham et al. 2003: 3; UNEP 2009: 31). Furthermore, in Section 3.1 these principles are defined and demonstrated how they are understood as a matter of this analysis.

2.5 The Debates Around Post-Conflict Peacebuilding, Good Governance And Natural Resources And Natural Resource Management

Good Governance In Context Of (Post-Conflict) Natural Resource Management

In the 1990s, the concept of *resource curse* emerged, explaining the paradox of natural resource wealth and poor (economic) development. This was mainly referring to the high dependency on natural resource revenues, mismanagement and the high risks of corruption (Rustad/Lujala 2012: 9; Arthur 2014: 41; Karl 1997). Briefly,

„natural resource extraction created and solidified asymmetries in wealth and increased the income gaps between the rich and the poor; this, in turn, contributed to the institutionalization of corruption

¹⁰ See Appendix II.

and enabled oppressive regimes to maintain their political power” (Arthur 2014: 41).

For the purposes of this study, it is important to acknowledge that already at that point there was analogously made a connection between Natural Resource Management (NRM) and good (or bad) governance. Also Collier (2007) found out that abundance of natural resources and the absence of good governance leads to the creation of greed (Collier 2007; Owusu et al. 2014: 221) and mismanagement of natural resources (Mehlum et al. 2006). In addition Alao describes, that most of the conflicts over natural resources in Africa have underlying cause in the lack of ability of state institutions to manage natural resources, especially related to the differing opportunities, fiscal management, the distribution of revenues and the protection of minority and property rights (Alao 2007: 242, 243).

Because the *resource curse* is seen as a governance related problem, good governance is often presented as a „panacea for resource mismanagement in Africa“ in order to reach an overall development (Arthur 2014: 50). As a consequence the emergence of conflicts linked to natural resources are recently more understood as related to the management or mismanagement of natural resources or more broadly of natural resource governance (Frerks et al. 2014: 14; Mehlum et al. 2006).

Post- Conflict Peacebuilding And Natural Resources

Although there have been discussions about good governance and NRM, it seems that when it comes to the nexus of NRM, peacebuilding and good governance focusing on post- conflict states the scientific literature is still ongoing. The scientific elaborations of this subject mainly based on case studies, country specific post- conflict resource management and which lessons can be drawn out of these settings (Bruch et al. 2009: 62, Rustad/Lujala 2012, Young/Goldman 2015). First, resource management for the purpose of peacebuilding has to be distinguished from measures in peacetimes. In post- conflict regions, the institutional capacity is weak, social distrust is present, a government authority is often non- existent and the prior aim for policy makers in post- conflict environments is to maintain peace (Bruch et al. 2009).

Even though, there is no “general” theory of Post- Conflict Natural Resource Management (PCNRM) existing, several debates are emerging around certain key concepts (Frerks et al. 2014: 14).

One broader approach is the concept of livelihood. Here, the core idea of the argument is, that not only poverty or environmental factors themselves are driver for conflict but the loss of livelihoods due to environmental degradation (Frerks et al. 2014: 20; Young/Goldman 2015).

Another strand of scholars have a different understanding of the role of high-value natural resources for post-conflict peacebuilding. Their argument focuses on a more instrumentalist approach, claiming that the environment could be a unique peacebuilding tool with certain characteristics: “environmental challenges ignore political boundaries, require a long-term perspective, encourage local and non-governmental participation, and extend community building beyond polarizing economic linkages” (Conca et al. 2005: 149)¹¹.

Also from the political economic perspective, several scholars are analysing natural resource management and opportunities for development and economic growth (e.g. Bannon/Collier 2003; Ballentine/ Nietzsche 2005; Humphreys et al. 2007; Ford 2015).

Either way, in the literature focusing more on (practical) policy suggestions and emerging problems, all of these perspectives are integrated in policy recommendations. There is a consensus about the need for developing (case specific) strategies and NRM measures and their importance for the transition to peace (Bruch et al. 2009; Frerks et al. 2014; UNEP 2009). Because especially for resource-rich countries, natural resources may provide livelihoods for the (local) population and could, when managed well, be a major source of (national) income. “Failure to respond to environmental needs of war-torn societies may greatly complicate the difficult task of peacebuilding” (Conca/ Wallace 2009: 486).

This goes along with the demands of important political actors like the UNEP for “integrating environment and natural resources into peacebuilding is no longer an option- it is a security imperative” (UNEP 2009: 5). But only one quarter of peace negotiation in affected countries have addressed natural resource mechanisms (ibid.).

Due to the fact, that peacebuilding is a broad concept, as presented above, there are several entry points for studies or research of PCNRM. For example, some scholars are focusing on the natural resources in peacemaking as the basis for peacebuilding (e.g. Haysom/ Kane 2009; Bruch et al. 2009) or on shared management of natural resources and their revenues as a confidence-building measure between parties, important for realizing other means, like provide basic services, rebuild the economy and avoid a return into conflict (UNEP 2009; Conca/Wallace 2009; Young/Goldman 2015). Also some look at concrete concepts like Disarmament, Demobilisation, Reintegration and natural resources (e.g. UNEP/ UNDP 2013), policies to limit illegal extraction of natural resources, the degradation of the environment, revenue sharing, commodity tracking, revenue or wealth distribution and gender issues (e.g. UNEP 2009; Jensen/Lonergan 2012; Rustad/Lujala 2012; Hayes/ Perks 2012; Young/ Goldman 2015). Also several initiatives and international organisations

¹¹ Embedded in this approach, there is for example rich (on case studies) based literature, how shared (transboundary) water resources could be catalysts for more cooperation between conflict parties and therefore a long-lasting peace prospect (ibid.). But this will not be included in this study, due to the focus on intrastate wars.

have suggested „good“ policies for the management of natural resources and their revenue, like the Mining Sector Reforms of the World Bank (2003) and the Resource Charter of the Natural Resource Governance Institute (NRGI) (NRGI 2014). All in all, NRM can show war-torn societies the benefits of peace and increase the confidence in government (Conca/Wallace 2009: 499; Beevers 2015: 29). But the great risk is, that the implementation in practice is not effective or the benefits are divided along conflict lines (Haysom/ Kane 2009; Green 2015). Hence „proper resource governance could not only help resolve resource conflicts, but also prevent them and lead to peaceful mutual relations“ (Frerks et al. 2014: 14).

The Management Of Resource Concessions And Post-Conflict Peacebuilding

The management of resource concessions, as a part of PCNRM is highly relevant to a post-conflict state blessed with natural resources. Good management of conflict resources through the concession allocation process could guarantee a state the reliable and high income it needs for development and reconstruction and establish employment. It might also be a first step in showing the population a more transparent, legitimate system of governing in interest of the people in order to regain trust and hence it can be a major step for the transition to peace (Le Billon 2012: 69). Concerning the management of natural resource concessions in a post conflict environment a primary goal should be the review, renegotiation or cancellation of resource contracts awarded to extractive industry during the civil war and transitional periods. This is of high priority because these licences were in many cases signed by corrupt or illegitimate leaders and are therefore often not valid. Also these concessions might not be made in the best interest of the population or the state and therefore there is the prospect of maximising the states revenues through a reappraisal process (Chêne 2007; Le Billon 2012: 70; Rustad et al. 2013).

Focusing in this study concretely on the review and renegotiation process of mining concessions in post-conflict states, like Liberia and the DRC the literature provided is still in its beginnings and mainly coming from the political economic perspective or published by research institutions, Initiatives or NGOs, like NRGI, Global Witness and the Transparency and Accountability Initiative (TAI).

Although it is mentioned in policy recommendations from the UNEP (2009), in a policy Brief of the Environmental Law Institute (ELI) and the UNEP (UNEP/ ELI 2013) there are some scholars analysing this issue based on case studies trying to draw lessons and/or embed it into a broader, more general approach (e.g. Le Billon 2008; Rosenblum /Maples 2009; Tienhaara/ Ford 2010; Rustad et al. 2012: 578, 579; Lukanda 2014). Le Billon for example, includes the assumption that if managed well, renegotiation of resource contracts can maximise public revenues, foster

transparency and accountability and mitigate the social and environmental impact of resource exploitation (Le Billon 2008: 5,6 ; 2012: 69). He also pinpoints risks of renegotiations for post-conflict states, like for example endure inexperienced or unregulated companies in order to jump-start the economy, which might create problems in the long- term (Le Billon 2012: 71). Chêne for example, spotlights risks in the renegotiation of mining contracts, especially corruption (Chêne 2007). Some scholars generally focus on the role of the Extractive Industry Transparency Initiative (and good governance) (Rich/Warner 2012; Hilson/Maconachie 2008) or for example the European Union Initiatives (Brack 2012) as peacebuilding efforts. Especially concerning the DRC the provided research of analysis of the reappraisal process is limited and is often including demands, for example for greater transparency (Carter Center 2007, 2009; Kabemba 2008; Le Billon 2012; Lukanda 2014).

This study of analysing the good governance dimension of peacebuilding through the reappraisal process of resource concessions in post- conflict societies, is trying to provide an effort for further research for the ongoing debate in the literature. Even though the „single“ debates of good governance, peacebuilding natural resources and civil war are often discussed, to what extent a government could foster peacebuilding after a civil war associated with conflict resources through the management of natural resource concessions has not been in the focus of research yet. Hence, which derives the relevance of this study.

3. Evaluation Of The Governmental Management Of Resource Concessions Fostering Good Governance In Post-Conflict Liberia And The Democratic Republic Of The Congo

The aim of this chapter is an evaluation of the management of resource concessions fostering good governance of post- conflict Liberia and the DRC. Therefore, the first step will be to embed the focused aspects of this work - legitimacy, transparency and sharing of benefits- into the debate of good governance and to define and adopt these principles for the purpose of this analysis. Following that, first the Liberian civil war (1989-2003) with a focus on the role of natural resources will be briefly demonstrated. Then a detailed presentation of the process of the review and renegotiation of resource concessions taking place in Liberia will be shown and to what extent this process was fostering good governance. The next section concentrates on the second case study, the DRC. Also, the role of natural resources in war (1996-2003) should be determined in order to understand the problematic concerning natural resources. However, because of the limited framework of this elaboration, it stands to reason that a detailed understanding of the underlying and historical causes of both wars cannot be delivered. In addition, having the same structure as the Liberian case, the

reappraisal process of resource contracts will be worked out and assessed.

3.1 The Principles Of Good Governance: Legitimacy, Transparency And The Sharing Of Benefits

As explained above, the basis of the UNEP chart the three principles of legitimacy, transparency and sharing of benefits should be examined.

The Principle Of Legitimacy

The principle of legitimacy, embedded in “Legitimacy and Voice”, are composed of “Participation and “Consensus Orientation” according to the UNDP guideline. Participation constitutes „all men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their intention. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively” (Graham et al. 2003: 3). In addition, consensus orientation is defined as „good governance [which] mediates differing interests to reach a broad consensus on what is in the best interest of the group and, where possible, on policies and procedures” (ibid.).

The decision-making processes in this analysis are the governmental review and renegotiation processes in the two post-conflict cases of Liberia and the DRC. For the purpose of this work, participation in the context of the review and renegotiation process through „intermediate institutions that represent their intention“ should be understood here as the members of the Review Group or Commission. Furthermore the possibilities for NGOs or other civil society organizations to influence the decision-making process, for example in the role of observers, or of the population itself to exercise influence on the decision-making process, is here understood as directly having a voice in the process. This goes along with the related assumption from Lockwood et al. (2010: 13) that ensuring “genuine dialogue between NRM organizations and their stakeholder constituencies, including allowing stakeholders to exert substantive influence on decision-making that affects their welfare, may also foster legitimacy”.

Hence it should be analysed which formal existing channels of voice these actors had in the review and renegotiation process in the two cases. For analytical reasons, the second part of the definition is not captured in this analysis, whereas capacities, for example to have access to relevant information, are mentioned in the section of transparency.

Related to the aspect of “Participation”, “Legitimacy and Voice” is consensus orientation. The main issue here entails the goal to reach a decision of “what is in the best interest of the group”, which is understood here, as an outcome of the review and renegotiation process which is at least an

improvement compared to the original agreement and hence produce a result in the interest of the country. Also here the policies and procedures in this work embrace the review and (possible) renegotiation process. The consensus orientation can be exercised in the procedure itself, through consensus strategies for example in the Commission. Consequently, as a matter of this work, the focus should lay on the outcome, or the result of the renegotiation process and the strategy used in the review and renegotiation process.

The Principle Of Transparency

Also, according to these UNDP good governance principles, “Transparency” is one dimension of “Accountability” and is therefore embedded in the concept of good governance.

The definition of transparency¹², as provided in the good governance guideline of the UNDP is here seen as not easy to operationalise and adopt, especially in the context of natural resource management. Hence the following definition of transparency is used for the purpose of this work, provided by TAI, developed in the context of natural resource governance: „Transparency is a characteristic of governments, companies, organisations and individuals that are open in the clear disclosure of information, rules, plans, processes and actions“ (Darby 2010: 9). In this work, because of focusing on the governmental review and renegotiation process, it is the transparency of the governmental process which will be in the centre of analysis. In addition, as „ a principle it is that public officials and civil servants have to act visibly, predictably and understandably“ (ibid.). But the TAI, also add, that simply making information accessible is not sufficient, consequently the information should also embrace two qualifying criteria (Darby 2010: 9):

- 1) Relevant and accessible: The information should be disclosed plainly and in comprehensible language, in formats accessible for diverse stakeholders, whilst maintaining the details and disaggregation needed for analysis, evaluation and participation .
- 2) Timely and accurate: „Information should be made available in sufficient time to permit analysis, evaluation and engagement by relevant stakeholders“ (ibid.: 9). This implies, that the information should be available for planning, during the process and after the implementation of policies. The information should be up-to date, accurate and complete.

Following from these definitions, subject to the analysis here and the relevant information will be an official announcement of the process, the terms of reference for the review, the review report, the renegotiation priorities or terms of reference and finally the outcome of the renegotiation process

12 The UNDP defines “Transparency” as the following: “transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them” (Graham et al.2003: 3).

through the disclosure of contracts (the original and the amended)¹³. For the aim of this work, this information is seen as important for transparency of the review and renegotiation process, because due to the announcement the process visibly began. Also, in regard to the predictability and understandability of the process, meaning that the rules and plans are clear, the terms of reference for the review process or respectively the renegotiation priorities or terms of reference have to be known, at least for the members of the commission. To understand and predict the renegotiation process, it is, as understood here, relevant for the process to make the review report available to diverse stakeholders, which means at least the members and participants of the Committee, but at best also a public disclosure.

These documents should be disclosed plainly and in comprehensible language (according to criteria one) and here especially focusing on the aspects of timely and complete (according to criteria two). Based on the fact, that in both cases the government is executing the process and has been democratically elected, here is the assumption that the information provided is accurate.

The Principle Of Benefit Sharing

The principle of benefit sharing as an aspect of good governance, is not included in the UNDP principles. Due to that fact, the term for the aim of this study understood as the following, stated by REDD+¹⁴, a programme for forest resource management. This definition is chosen, because it lays in the field of natural resource management, and even though it is not particularly mining, the definition also comes from the extractive industry sector and hence it is assumed that it can be more easily adopted for the purpose of this study.

“Benefit sharing or sharing of benefits refers to an *intentional* transfer of financial payments and payments in the form of goods and services to intended beneficiaries” (Behr et al. 2012: 6, 7). Benefit sharing is not resulting from a payment for a good or service regulated through the market price nor the recruitment of employees through a competition of the market (ibid.). Hence, benefit sharing could include any of the following:

- “Any general payments, services, or other things of value¹⁵ provided unilaterally because the law requires it¹⁶ [...]”

13 Concerning negotiated resource contracts „good practice for transparency, however, would require the publication of all signed contracts“ or at least the ex post publication of these contracts (Rosenblum/Maples 2009: 55).

14 REDD+ is a United Nations (UN) Collaborative Programme with the aim of Reducing emissions from deforestation and forest degradation in Developing Countries (REDD+).

15 See Behr et al. (2012: 7): “Other things of value might include goods; training; preferential hiring patterns such as requirement to hire local labor; physical infrastructure such as water supplies, roads, buildings, communication lines, or improvements that open land to new uses; social services including education, health services, or community organization; sharing, conveyance, or recognition of authority or legal rights; credit; access to markets; or anything else the local partner finds valuable “.

16 “[...] such as a share of taxes, royalties, or fees received by the government or a share of revenues generated by the outside partner” (Behr et al. 2012: 6, 7).

- or on what might appear to be better-than-market terms, but generating value to the outside partner in the form of goodwill¹⁷ [...] [or] to achieve a non- commercial objective of the outside partner¹⁸ [...]
- Profit sharing“ (ibid.).

Therefore, outgoing from this definition, this study will look at what benefit sharing aspects the governmental renegotiation process achieved. Because the definition above, provides a quite broad catalogue of what factors are included in benefit sharing, for the purpose of this study it should be looked at the existing negotiated improvement towards benefit sharing included in the amended contracts. Therefore, in the following, some gains for benefit sharing should be demonstrated for analytical reasons exemplary, looking at preferential hiring patterns to hire local labour and social services.

3.2 Analysing The Case Of Post-Conflict Liberia

Liberia, located on the African west coast is wealthy of natural resources: rubber, tropical timber, iron ore, gold and diamonds. Historically, the state has not established regulation policies for (foreign) private investment as long as revenues from the exploitation of natural resources were ensured. Therefore little attention was given to standards, like human rights, labour circumstances or environmental protection. Also the state, or officials through the power of the state, enriched themselves through resource exploitation (Tienhaara/ Ford 2010: 363).

Also, besides the history of the state's resource exploitation of foreign investors, natural resources or generally the environment are highly relevant for the Liberian people for daily life. Most of the Liberians are living in rural areas and are therefore dependent on the environment, like agriculture and forest products for their livelihoods (Altman et al. 2012: 339).

Consequently, also the industry and economy is highly dependent on (the export) of natural resources. Because of Liberia's large assets of iron ore, diamonds and gold, the main commercial products are palm oil, cocoa, coffee and rubber¹⁹. Especially before the civil war in Liberia, the country was heavily reliable on the mining of iron ore and one of the major exporters of such (International Business Publications, USA 2013: 98). After the end of the civil war, the major exports are especially rubber and timber (ibid.)

17 “[...] (of the local partner, of government, of potential customers, and so forth), such as preferential hiring of local persons or paying designated individuals/households or communities a share of profits obtained from the project “ (Behr et al. 2012: 6, 7).

18 “[...] such as empowerment of minorities, reduction of poverty, or conservation of biodiversity.” (Behr et al. 2012: 6, 7).

19 See Ministry of Commerce and Industry, Liberia (n.d.): Major Exports Trading Partners; URL: <http://www.moci.gov.lr/2content.php?sub=74&related=18&third=74&pg=sp> , 07.01.2015.

3.2.1 The Liberian Context: Civil War, Conflict Resources And The Way To A Post- Conflict State

The Liberian civil war (between 1989- 2003) broke out 1989 when Charles Taylor, first a warlord later a president, tried to overthrow the government of Sergeant Samuel Doe. At that time, social, political and ethnic tensions erupted. Charles Taylor started rebellion to overthrow Doe's government with his fraction, the National Patriotic Front of Liberia (NPFL). By June 1990 the NPFL entered Monrovia, Doe fled and Taylor declared himself the new President.

Later the Independent National Patriotic Front of Liberia (INPFL) was founded as a break- away fraction of Taylor's rebel group and murdered the overthrown President Doe. After Taylor got into power, also the supporters of President Doe created an own fraction, the United Liberation Movement of Liberia for Democracy (ULIMO). These three parties, fought a long, bloody and destructive war in Liberia (Gariba 2011: 112). After the intervention and mediation of the Economic Community of Western Africa States (ECOWAS) the conflict parties signed the Abuja Accords in 1995 and settled new elections. The elections held in 1997 were won by Charles Taylor and he became President. But several actors did not want to acknowledge Taylor's success in the elections and violence broke out again. Exiled Liberians in Guinea founded a new movement, the Liberians United for Reconciliation and Democracy (LURD), attacking the government of Charles Taylor. On the other hand, the Movement for Democracy in Liberia (MODEL) operating from and backed by the Ivory Coast was also fighting against the President's regime (Gariba 2011: 112; Ford 2015: 138, 139).

Even though, the underlying roots of the Liberian war are still discussed, the (international) attention to the civil war has mainly focused on the economic aspect of Charles Taylor's government. Beevers argues that Taylor misused his power and control to exploit and trade with conflict resources, like diamonds, iron ore, rubber and timber to reproduce his power and enrich himself (Smillie et al. 2000: 48; UNSC 2001b; Beevers 2012: 373; Altmann et al. 2012: 340)²⁰. Whereas Ellis (1999) found out that in the early stages of the war, the rebel movements were grounded and recruited for a political aim and change, Reno (1998) argues from the economic perspective. He claimed that Taylor was more aiming to reach control over natural resource markets, than for a political goal. But nevertheless, during civil war both sides, the government and the diverse rebel movements strived to gain control over Liberia's natural resource wealth in order to fund the war and finance military actions (UNSC 2001b; Altman et al. 2012: 340; Beevers 2012:

²⁰ But Charles Taylor efforts to gain access to natural resources went even beyond Liberia's borders. He was involved in the civil war of the neighbouring country Sierra Leone, supporting his allies, the Revolutionary United Front (RUF), as some scholars are arguing, in order to gain access to Sierra Leone's diamond fields and to fund violence (Ross 2004: 57; UNEP 2009:10; Beevers 2012: 373).

373). The international community became more and more aware of the connection between the Liberian civil war and natural resources. Hence, the UN attempted to address the dynamics of conflict, but failed to stop or mitigate the trajectory of the Liberian war. At least thirteen peace agreements trying to end the war in Liberia failed, because warring parties feared they would lose access to Liberia's resource wealth and hence lengthen the violence (Ross 2004: 53).

As a result, the UN Security Council (UNSC) first banned the import of diamonds from Sierra Leone (UNSC 2000a: 2) and later the import of timber products originated in Liberia (UNSC 2003a: 4). But violence continued until June 2003, when the (international) pressure²¹ forced Taylor to step down and he flew to Exile in Nigeria (UNEP 2009: 10). The Comprehensive Peace Agreement (CPA) between the warring factions LURD, MODEL and Taylor's government was signed in August 2003 (Ford 2015: 140). The National Transitional Government of Liberia (NTGL) was established and elections prepared. In addition, the UN established a United Nations Mission in Liberia (UNMIL). UNMIL's mandate embraced among other aspects, humanitarian assistance, a security sector reform and the special pillar „to assist the transitional government in restoring proper administration of natural resources“ (UNSC 2003b: 4; Altman et al. 2012: 342; Ford 2015: 141).

As demonstrated above, in the Liberian civil war there was a strong relation between the (exploitation of) natural resources and the war was thus fuelled by *conflict resources* (UNEP 2009: 11; Altman et al. 2012: 340). More than 250.000 people died during civil war, natural resources got highly exploited and the Gross Domestic Product (GDP) was reduced by 50 percent (Altman et al. 2012: 340, 341). Also, the point of the installation of the NTGL can be seen as the beginning of the post-conflict period in Liberia. Latest, for the aim of this analysis, at the end of the NTGL and the elections held in 2005 with the new female President Ellen Sirleaf the stage of peacebuilding was reached, because since then the political discourse was focusing on development objectives²²

3.2.2 The Post- Conflict Governmental Review, Renegotiation And Cancellation Process Of Natural Resource Concessions

In the following section, the process of the review, renegotiation and cancellation of resource concessions in post- conflict Liberia should be demonstrated. In particular, in regard to what extent this process was fostering legitimacy, transparency and benefit sharing. In the centre of the elaboration will be the review process and the renegotiation with the Mittal Steel Holdings N.V. (ArcelorMittal) and the Firestone Natural Rubber Company LLC. (Firestone). Those have been the

21 It is uncertain, if the UN sanctions directly had an impact in ending the war, but by putting the focus on Charles Taylor and conflict resources, it helped to frame the understanding of the Liberian civil war, of the UN and peacebuilders (Beever 2012: 373,374).

22 See for example, President Ellen- Johnson Sirleaf's inaugural speech (Sirleaf 2006).

two biggest resource concessions awarded in Liberia and issue of the governmental reappraisal process. Also rubber and iron ore have been described as conflict resources fuelling the civil war in Liberia (UNEP 2009: 11).

In the case of Liberia, this process was supported by the Governance and Economic Management Assistance Program for Liberia (GEMAP), signed by the Transitional Government in 2005, with all the international partners and donors. One aspect of this agreement was to start a review process of all the resource concessions (Ellis 2008: 121). Under GEMAP, it was also the issue to review the ArcelorMittal and the Firestone contract, both signed by the NTGL in 2005, which was known as “exceedingly corrupt” (Rosenblum/Maples 2009: 52). That is why, on “January 16, 2006, shortly after coming into office [...] President Ellen Johnson-Sirleaf instituted a policy to review all contracts and concessions entered into by the transitional government that preceded her” (Rosenblum/ Maples 2009: 52)²³. The GEMAP mandated the Liberia’s Public Procurement and Concessions Commission (PPCC) with the task to review those agreements.

But due to the slow starting process of GEMAP by mid- 2006, the government began a separate, independent fast track review of those two concession agreements with ArcelorMittal and Firestone. The government was reacting to the high pressure and expectations from the population, as well as from the international community.

Whereas the GEMAP mandated review of the NTGL contracts was the consequence of the government's and international concerns about the mismanagement of natural resources and public finances during the transitional period, the fast- track review of Sirleaf was embedded into a broader agenda. The from her initiated reappraisal process aimed not only to address these doubts of mismanagement, but also to focus on social and economic needs of Liberia's war-torn society (Kaul/ Heuty 2009: 27; Rosenblum /Maples 2009: 52).

Sirleaf established for each contract review and renegotiation an Inter-Ministerial Concession Committee (IMCC)²⁴ and a negotiation team, which were directly connected to the President and her Cabinet. Members of the IMCCs were government officials and technical advisor, but did not include representatives from international parties or the civil society. So parallel to the GEMAP

23 See also the Speech of President Sirleaf on the Occasion of the Formal Launching of the Extractive Transparency Initiative In Liberia Tuesday, 10th July 2007 (Sirleaf 2007: 3).

24 For the review process concerning the ArcelorMittal Agreement, the President appointed the following members for the IMCC: Minister of Lands Mines and Energy as chair of the ArcelorMittal IMCC. Also representatives from the Ministry of Finance, Ministry of Justice, Ministry of State, Financial, Legal and Economic Affairs, Ministry of Planning & Economic Affairs, Ministry of Commerce, Liberia Reconstruction and Development Committee, and the National Investment Commission.

For the review process concerning the Firestone Concession Agreement, the President appointed the following members for the IMCC: Minister of Agriculture as chair of the Firestone IMCC and included representatives from the Ministry of Finance, Ministry of Justice, Ministry of Labor, Ministry of State, National Investment Commission and the Liberia Reconstruction and Development Committee (Kaul/ Heuty 2009: 31, 32, 42).

mandated Contracts and Concessions Review Committee (CCRC), the governmental Committee started the review and renegotiation process with Firestone and ArcelorMittal, which will be in the following in the centre of analysis.

The ArcelorMittal Review And Renegotiation Process

The original concession agreement, the Mineral Development Agreement (MDA) was signed by the NTGL, not even a year before the review, in August 2005. The MDA was an „exclusive right to explore, develop and produce and market iron ore and associated minerals in the concession area“ (Kaul/ Heuty 2009: 4). Before this agreement, the resource concession in this area has been awarded to an American- Swedish minerals company since 1960. Therefore, the MDA represented the first significant new investment in Liberia since 20 years. The company promised a 900 million dollar investment for Liberia and hence it “was the most important contract among a number reviewed“ (Ellis 2008: 123).

In June 2006, the IMCC started preparing the reappraisal. As a first step, the Committee reviewed the original contract and delivered recommendations to the President and her Cabinet for further renegotiations. The IMCC had technical assistance from governmental and non- governmental advisor²⁵, even though there was no formal mechanism like the CCRC. In the beginning of August, the IMCC delivered its report to the President. At the end of the month, also the CCRC submitted its report, supporting the IMCC's concluding recommendation to renegotiate the MDA with ArcelorMittal. One argument for example brought up, was that the MDA contract was not compatible with the Liberian law and in particular not in the best interest of Liberia. However, as a result of the review process, the IMCC and the Government decided to renegotiate instead of cancel the contract. The President appointed a governmental negotiation team and defined negotiations priorities, which only have been accessible to the members of the negotiation team and their advisor²⁶. In addition to the ISLP report, that outlined the Government's options if it chose to renegotiate the ArcelorMittal MDA, the IMCC also had access to an earlier report on the MDA, prepared by the Columbia Law School (Kaul/ Heuty 2009: 32).

The renegotiation process started in September 2006 in New York. The Liberian negotiation team agreed on a very cautious strategy, being aware of the experience of the business negotiators. For

25 The work of the IMCC for the ArcelorMittal review and renegotiation was for example assisted by reports prepared by Professor Bob Hillman, Professor Lou Wells and Joe Bell of the International Senior Lawyers Project (ISLP), after a request of President Sirleaf (ibid.:32).

26 These four priorities were composed of: “1. the rail and port are part of Liberia's national strategic interest and Government must retain ownership of these assets; 2. to the extent possible, the new contract must reflect the principle of general applicability of Liberian law, especially in fiscal and environmental matters; 3. the revised contract should not encroach on the sovereignty of Liberia (e.g., with respect to stabilization, etc.); and 4. where possible, the team should seek to maximize near term revenue to the Government “ (Kaul/ Heuty 2009: 32, 33).

example, the several members of the Liberian negotiation team, except the Chairman only spoke in intern discussions and not in the negotiation round. After several negotiation rounds, both parties reached an amended agreement in December 2006. Both sides signed a non binding confidential protocol, including all issues and concerns recommended by the IMCC. But just before the last negotiation round should be completed, the ArcelorMittal company raised doubts about the tax and provisions on contractors in the outline. After a direct meeting with President Sirleaf, her advisor and the Chairman of the company, the issue was discussed and they ended the dispute. On 28th of December in 2006, both parties signed the renegotiated concession contract (ibid.: 36).

The Firestone Review And Renegotiation Process

The review process, concerning the Concession Agreement with Firestone signed in April 2005 by the NTGL was similar to the ArcelorMittal review. But because Firestone is a company, rooted in Liberia's economy for more than 80 years, the review process implied several challenges and risks. Firestone was not a new investor like ArcelorMittal, trying to keep the new concession in order to profit from the increasing commodity prices. Also, beside the state itself, the company is the largest employer providing 4000 jobs to the Liberian population. Even though, the (international) support for the renegotiations by Sirleaf government was high, Firestone did not have strong incentive to agree on renegotiating the existing contract. Also in this case, the IMCC was assisted by external and internal advisor²⁷ and submitted a report to the President with the recommendation to enter renegotiation with Firestone. Again it was underlined, by the same recommendation of the parallel ongoing CCRC review process (ibid.: 43).

In 2007, after the ArcelorMittal amended contract was ratified, the President appointed as well a governmental negotiation team with technical advisor, a subset of the Firestone IMCC and presented the members and advisor the priorities for the negotiation process²⁸. The involved parties were consent about the need to negotiate confidently and behind close doors, in order to achieve the aimed changes. Firestone participated at the negotiation rounds in Washington D.C., but announced concerns about the need for renegotiation of the valid Concession Agreement of 2005. However, the Government challenged this complain, stating that under the terms of the Agreement, Liberia's

27 The Firestone IMCC was supported by the following technical advisor: "Mr. Michael Jordan, a rubber industry financial expert familiar with Liberia's rubber industry, Mr. Jim Belcher, a rubber industry consultant to the Government and later by Mr. Joe Bell of the ISLP" (Kaul/ Heuty 2009: 42).

28 These four principle to guide the negotiations were: „1. to the extent possible, the new contract must reflect the principle of general applicability of Liberian law, especially in fiscal and environmental matters; 2. transfer pricing must be based on arms-length transactions linked to international market mechanisms; 3. the revised contract must have a commitment from Firestone for value-added manufacturing (e.g. a rubberwood factory); and 4. the automatic 50-year Extended Term must be eliminated and the term of the Agreement limited to 36 years: the period for Rehabilitation and Regular Terms" (Kaul/ Heuty 2009: 43, 44).

Government has the right to renegotiate. Following the same strategy and trajectory like in the other negotiations, an agreement between the parties was achieved in November 2007, addressing all the issues raised in the review reports of the IMCC and the CCRC.

The Ratification Process

After each process, as demonstrated above, the amended concession agreements have been timely submitted to the Legislature (the ArcelorMittal agreement, after signing by the end of December 2006, the Firestone agreement by the end of February 2008) (ibid.: 36, 42). The contracts have been presented to the National Legislature by the negotiation team in a public hearing, also heard by several stakeholders, company representatives and civil society actors (ibid.: 27). In addition, it was broadcast live on radio. Furthermore, there was a wide national and international media coverage. In each process, after public and confidential discussion rounds of the Legislature, both agreements got ratified in April 2007 (ArcelorMittal) and March 2008 (Firestone) and finally signed by the President (Ellis 2008; Kaul/ Heuty 2009). After the ratification, the agreements were printed on handbills and hence made a public document. Also Papers named „Summary of the Main Changes brought about by the Government of Liberia's Review of the Mittal Mineral Development Agreement“ and „Summary of the Main Changes Brought about by the Government of Liberia's Review of the 2005 Concession Agreement with Firestone Liberia, Inc.” have been published by the Government and are accessible²⁹. The agreements in full length are public, but not easy to access yet (Rosenblum/Maples 2009: 52). Both reviews and renegotiations of these resource concessions between 2006 and 2008 had enormous improvements compared to the original contractual frameworks. The renegotiated ArcelorMittal agreement has around 30 percent improvements, whereas the Firestone renegotiation process even resulted in nearly 40 percent amendments (Kaul/ Heuty 2009).

3.2.3 Evaluation Of The Impact Of Resource Concessions For Good Governance

This section will analyse to what extent the reappraisal process of the ArcelorMittal and Firestone concession, exercised by the post-conflict Liberian government fostered good governance, focusing on the three aspects of legitimacy, transparency and sharing of benefits.

²⁹ These Summaries are available at the Government of Liberia website. See Executive Mansion Liberia (2006) for the Summary concerning the ArcelorMittal Agreement and Executive Mansion Liberia (2008) for the Firestone Agreement.

Evaluation Of Legitimacy

In the case of Liberia, the IMCC was created by the democratically elected President and composed of (elected) members of the Parliament and Government, and thus might be described as „legitimate representatives“³⁰. Therefore through indirect participation, the analysis here gives a hint that the population had a voice in the decision- making process. This is also supported by the above showed argument, that the members were personally accountable and could make decisions in the process. Only in matters of dispute, the President had the last decision making option (Kaul/Heuty 2009: 10). But there has been no formal mechanism to include civil society actors nor existed possibilities for participation of the affected population. Even though, according to Kaul and Heuty (2009) there have been some informal advice and consultations with civil society organisations, which could not be examined in the framework of this analysis, the direct participation and part of legitimacy might not have been fostered.

In addition, the IMCC was an ad hoc Commission without any formal obligations, also for the selection of the members of the Commission. Hence these members were hand picked and selected from the President from several related ministries, which in the case of Liberia might have fostered participation. But only because Sirleaf chose commission members with different backgrounds and expertise, representing the basis of „differing interest“, like defined for legitimacy (ibid.: 52).

Furthermore, these diverse actors agreed during the review, and especially during the renegotiation process on a consensus strategy. Hence, not only the strategy used in the process of decision-making itself shows some evidence for consensus orientation, but also the outcome of the process might present consensus orientation. Because as a result of the process, the short- term revenue was maximized and also one company, ArcelorMital promised to raise its investment from \$1.0 billion to \$1.5 billion (Kaul/ Heuty 2009: 2). Further, between 30 and 40 improvements compared to the original contracts could be achieved through the process, which was generally seen as a success (Le Billon 2012: 76, Cotula 2010: 5; Rosenblum/ Maples 2009: 52) with „significant gains for Liberia“ (Kaul/ Heuty 2009: 1). According to these aspects, there might be some evidence, that especially due to the improvement of the amended contracts, consensus orientation or „for what is best in the group“ could have been fostered through the process.

Evaluation Of Transparency

In the case of Liberia's fast track review and renegotiation process, concentrating on the two biggest mining concessions (ArcelorMittal and Firestone), there is some evidence that the transparency could have been at least fostered to a greater extent. Firstly, there was the official announcement in

³⁰ See Lockwood et al. (2010: 6), stating that legitimacy also derives from a democratic statute or representation.

a public speech of President Sirleaf to review all the concessions made during the transitional period, which can be seen as a sign that the process “visibly“ began. Also, because the fast track review under President Sirleaf was complementary to the GEMAP process (Rosenblum/Maples 2010: 5), the terms of reference for the review have been adopted. In addition, it has to be said, that the narrow relevant actors, like the members of the review committee had access to the original contracts for the issue of reappraisal. Also the relevant documents for the advice during the process of preparing the review and renegotiation reports were delivered to their technical advisor. But both review reports of the IMCCs, including recommendations for the renegotiations have not been made public, but accessible to the members and advisor of the committee.

“Like the report by the ArcelorMittal IMCC, the report from the Firestone IMCC, while not specifically marked confidential, was viewed as a negotiation tool setting out the Government’s concerns with the 2005 Concession Agreement and was not a public document“ (Kaul/ Heuty 2009: 7).

This lack of disclosure was explained by the fact, that the „Government and its technical advisor felt that negotiations conducted through the press would make it harder if not impossible for the Government to reach agreement“ (ibid.). Hence it seems, that at least (ex post) the decision of the government was justified.

In addition, before starting the renegotiation with those two companies, the priorities for the negotiations developed by the President have been disclosed to the members of the negotiation team and their advisor.

Also after each renegotiation, the agreement between the Government of Liberia and the company was presented in a public hearing in the National Legislature by the negotiation team, which was broadcast on radio. This implies that it was possible for the public and relevant stakeholders to access the content of the agreements. But even though the agreements with ArcelorMittal and Firestone are seen as public documents, they are difficult to access in full length, but after request. Further, the Government acknowledged the importance of the two renegotiated contracts and printed the new agreements also on handbills. In addition, the Government released summaries on the gains for Liberia after the ratification of the two agreements as shown above, and hence there might be some evidence that the disclosure of these summaries fulfilled the criteria of a comprehensible language and formats for diverse stakeholders. Interestingly, Kaul and Heuty argue, there might have been some confusion in the Liberian Government about the obligation of a subsequent public access to the plain contracts (Kaul/ Heuty 2009: 12). However, according to the criteria of the quality of the relevant information, the disclosure of the summaries may not be seen as complete, but as timely, right after the ratification in the Parliament.

To sum up, after the analysis, there is some evidence that the principle of transparency was fostered,

but not in every possible aspect. Especially in accordance to the lack of full and complete disclosure of the relevant documents. Nevertheless, in regard of the high pressure of the Government to achieve significant results after the process, it might be understandable that at some stages of the process, especially during the renegotiation, information was kept confidential. This goes along with the idea, that good practice of transparency is at least an ex post disclosure of the relevant documents of the process, which, after this analysis, is suggested³¹. Also the fact, that the Liberia Reconstruction and Development Committee asked a report team to monitor and evaluate the process (Kaul/Heuty 2009: 2), might be a sign of the practice of the Government's commitment of „breaking with corruption“ and the „imperative that the re-opening of these extractive industries is rooted in transparency and accountability“ (Sirleaf 2007: 2).

Evaluation Of Sharing of Benefits

Now to the aspect of fostering the principle of benefit sharing through the governmental process of review and renegotiation in Liberia. In the amended ArcelorMittal, as well as in the Firestone Agreement, there have been achieved several improvements, which can be categorized under the term of “Benefit Sharing”. As a matter of this elaboration, it will be looked exemplary at preferential hiring patterns to hire local labour and one example of improvement in social services.

One example concerns the circumstances of labour recruitment. In the ArcelorMittal Agreement of 2006, it was stated that the recruitment of Senior managers have to be within Liberia (Executive Mansion Liberia 2006; Kaul/ Heuty 2009: 102; Le Billon 2012: 76) and also in the Firestone agreement it was renegotiated that the unskilled workers have to come from Liberia (Executive Mansion Liberia 2008: 4). These both issues, which were not restricted for Liberians before (Executive Mansion Liberia 2006; *ibid.*), might support the evidence that the aspect of benefit sharing, the preferential hiring of local (Liberian) labour in several positions, is here demonstrated.

Also in regard to the renegotiated contract of ArcelorMittal, there have been negotiated health care obligations for the worker of the company³², whereas in the original contract there have been only minimal social obligations (Kaul/ Heuty 2009: 102; Le Billon 2012: 76).

Also concerning social services, the outcome of the renegotiation process with Firestone determined new obligations, for example towards education. Compared to the old agreement, including an commitment „to undertake a study in coordination with the Government on the need for an additional high school in the Production Area“ (Executive Mansion Liberia 2008: 4) the new

31 See fn.13.

32 As the Government of Liberia, the Executive Mansion Liberia (2006) states: „Health and safety facilities, health care procedures and practices, and health and safety training to be in accordance with accepted international standards“.

agreement entails the completion and the construction of own company schools through the high school level. Also Firestone was also obligated to provide financial assistance for another local high school and for an adult education program (ibid.).

Consequently, following out of the (limited) analysis of this study, the “Legitimacy and Voice” principle might be seen as fostered, even though the lack of formal direct participation through civil society actors and NGOs might have weakened it. Especially due to the significant improvements resulting from the two renegotiations with ArcelorMittal and Firestone and the strategy used during the process, the consensus orientation seemed to be fostered as well, after this analysis. As shown, the transparency could have been also improved, but might not be utilized fully, because of the lack of complete disclosure. Also, as just on examples demonstrated, the sharing of benefits principle could be advanced in concrete new improvements, concerning issues of hiring local labour and social services. Consequently, it could be said, aware of the limited framework here, that the post-conflict Liberian Government fostered the three principles of good governance during the review and renegotiation process of resource concessions and hence took another step towards building peace.

3.3 Analysing The Case Of Post- Conflict Democratic Republic Of The Congo

The Democratic Republic of the Congo is one of the most resource rich states in the world, especially in terms of mineral wealth, but also for example timber. The great assets of copper, coltan, diamonds, gold, cobalt, timber, tin also lead to the act, referring to the DRC as a “geological scandal” (NIZA 2006: 6). But the main population is not profiting from the great Congolese resource wealth. In contrast, the “first African World War” have been taking place in the DRC, fuelled by its natural resources (UNEP 2009: 11), and whereon several actors have contributed to war, instability and pillaged the country and its resource wealth (ibid.).

3.3.1 The Congolese Context: Civil War, Conflict Resources And The Way To A Post- Conflict State

The first civil war (1996-1997) broke out after several events³³ within the Zaire³⁴, and also because the Government of Joseph-Désiré Mobutu had to deal with problems caused by conflicts in neighbouring countries. After the Genocide 1994 in Rwanda³⁵ for example, over one million

33 For example, there was a devastating economic crisis and a massacre after a student movement. For a detailed analysis of the reasons and background for the outbreak of the civil war, see Nest (2006: 19-24).

34 Joseph-Désiré Mobutu became president in 1965 and renamed the country in 1971, in Zaire.

35 During the Rwandan genocide 1994, nearly one million Tutsis and moderate Hutus were killed and murdered. In Rwanda meanwhile, the Tutsi-dominated Rwandan Patriotic Front (RPF) reached “eventual military victory” over

refugees entered the DRC which led, among other reasons, to a growing opposition against Mobutu's regime. By the end of 1996, especially external actors were starting attacks against the Mobutu regime. The Rwandan Patriotic Army (RPA) and the Uganda People's Defence Force (UPDF), as in the name backed from the Rwandan and Ugandan Governments, constituted together the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL) against Hutu militias, supported by the Zairian National Army (FAZ), the Army of the Congolese president Mobutu. This campaign was successful and the AFDL entered Kinshasa in May 1997 and Mobutu fled to Exile in Morocco. The head of the AFDL, Laurent-Désiré Kabila, declared himself as the new president and renamed Zaire into the Democratic Republic of Congo (DRC) (Nest 2006: 20-23). In accordance to Nest, a major contribution to the success of the AFDL were the revenues generated by selling future production concessions of mineral commodities to foreign companies (booty futures).

Also for the second outbreak of the war (1998-2003), there have been several reasons identified.

The Opposition against Kabila started to grow when external actors, like the Government of Uganda and Rwanda started a campaign against Kabila after his demand of greater autonomy. Also internally, powerful Congolese were unhappy with economic and political reforms (Nest 2006: 24).

In the wake of the second Congolese war, several Congolese, Rwandan, Angolan, Ugandan and Zimbabwean militias and rebel groups were fighting on the ground of the DRC for their interests (Nest 2006: 24-27).

In August 1999, the Lusaka Ceasefire Agreement was signed, but first significant progress in implementing this agreement could be recognized from the beginning of 2001, after Laurent Kabila's death in January 2001 (Grignon 2006: 64). The Rwandan and Ugandan government withdrew their troops and in the concluding session of the Inter-Congolese Dialogue (ICD)³⁶, a peace agreement was signed, on the 2nd April 2003 in Sun City. Hence on the basis of Grignon's argument, for the aim of this study, at that stage the situation in the DRC might be called 'post-conflict', but as a matter of this study, the first post-conflict elections marked the end of the conflict and transitional period.

The war in the Congo has been called the “first African world war”, especially because of the great involvement of external actors and the number of people who got killed: around five million people. Although the civil war has officially ended, in the areas of eastern DRC (the Kivus and north-eastern Orientale) violence and local conflict still remain (Burnley 2011: 8; UNEP 2011: 24). Around 20 armed groups are still active in armed conflict in these areas. But mainly, these groups are originating from neighbour states like Rwanda (Democratic Forces for the Liberation of

the Hutu militias and hence got into power of the Government (Nest 2006: 20-23).

36 The Inter-Congolese Dialogue (ICD) was organized by the African Union, who appointed the former head of the state Sir Ketumile Masire of Botswana as organiser (Grignon 2006: 64, 65).

Rwanda, FDLR) and Uganda (Lord's Resistance Army, LRA and the Allied Democratic Forces/National Army for the Liberation of Uganda (ADF, NALU). In addition, several small and medium- sized armed groups, like local defence militias (called Mai-Mai) and the Congolese Army are also still involved in the conflict and therefore “contribute to high levels of insecurity and ongoing conflict” (UNEP 2011: 24).

The conflict in the DRC is multilayered and complex. “Indeed, it is more correct to talk of Congo wars” (Nest 2006: 12). Because several motives, like ethnic, political and (local) grievances, related to access to land and resources and the aim of neighbouring countries to maintain their power and interests in the DRC (Nest 2006: 31; UNEP 2011: 24). But due to the high exploitation of resources and their impact in financing (both) wars, it seemed that the wars have been motivated by greed. However, as Nest argues the “evidence suggests, however, that these actors *initial* motives in entering the war were not economic” (Nest 2006: 31).

Nevertheless, during both wars, several actors contributed to illegal exploitation of the DRC's natural resource wealth. The UNEP states, that armed groups without an actor financing them have to fund their military action from another source. Consequently, this includes natural resources, which can be easily plundered. In the DRC, the conflicts between 1996-1997, 1998-2003 were fuelled by the resources copper, coltan, diamonds, gold, cobalt, timber, tin (UNEP 2009: 11). Also Ross is supporting the argument by the evidence, that in his categorized second Congolese war³⁷, the resource wealth lengthen the conflict in giving combatants an economic incentive to avoid or sign a peace agreement (Ross 2004: 53).

The connection between actors plundering natural resources and the conflicts in the DRC has been widely acknowledged, also at a high political level. The UNSC for example, established an UN Panel of Experts to elaborate the illegal exploitation of natural resources and other forms of wealth of the DRC (UNSC 2000b). In accordance to their report, nearly all mining sites in the Kivus are controlled by armed forces. This military resource extraction is exercised by national and foreign militias and also the Congolese army units (FARDC) (UNEP 2011: 24; Burnley 2011:7). Also, the decision of the Ugandan and Rwandan Government to involve in the DRC, was formed (partly) by the prospect of generated revenue of DRC's natural resources. As the UNSC (2001a: 6, 7) suggests, for example the Rwandan army built an efficient system to exploit DRC's natural resources in order to fund their military operation. Highly significant for the funding, was also the practice of the actors involved in the DRC, as the UNSC (2010) states „that the linkage between the illicit exploitation and trade of natural resources and the proliferation and trafficking of arms is among the

37 Ross (2004: 48) categorized the duration of the first civil war in the DRC in the year 1996 and the second civil war between 1997 and 1999.

major factors fuelling and exacerbating conflicts in the Great Lakes region“ (UNSC 2010: 2; UNEP 2011: 24, 25). Furthermore, the United Nations Organization Stabilization Mission in the DRC (MONUSCO) has, beside the mission in Liberia, the only clear mandate for post- conflict natural resource management³⁸, recognizing “the urgent need to fight illegal exploitation and trade of, natural resources in the Democratic Republic of the Congo, support the Government’s efforts and enhance its capabilities” (UNSC 2010: 6).

3.3.2 The Post- Conflict Governmental Review, Renegotiation And Cancellation Process Of Natural Resource Concessions

After briefly outlining the background of the DRC, and how the civil war was connected to natural resources, in the following the governmental reappraisal process of resource concessions in post-conflict DRC will be demonstrated.

The Review Process

As in the section regarding the case of Liberia, the focus here is on the renegotiation process of resource concessions, exercised by the post- conflict elected and legitimate government (Kabemba 2008). After the elections, and the establishment of a government under Joseph Kabila in February 2007 (Carter Center 2007: 2), the Ministry of Mines announced in April of 2007 to review mining contracts (Global Witness 2007: 4). The new elected President and Prime Minister Antoine Gizenga developed a „Governance Contract“, outlining and positioning the main aims and goals of the new government. This “Contract”, also implied attempts to foster transparency in the mining sector and to renegotiate, if necessary, existing mining agreements. This happened under high international pressure, especially from the World Bank and the European Commission supporting the formulation of the Governance Contract in accordance to the World Bank’s Poverty reduction and Growth Strategy Paper (Carter Center 2007: 2). In addition, already several other actors, like NGOs and a parliamentary Commission before (Lutundula Commission)³⁹ raised several concerns with the existing mining agreements (Carter Center 2007:1; Kabemba 2008: 6)

Hence, the Congolese Government started a review process for the existing resource concessions.

38 See UN (n.d.): Conflict and resources; URL:

<http://www.un.org/en/peacekeeping/issues/environment/resources.shtml>, 03.12.2015.

39 The Lutundula Commission was created in 2005 as a parliamentary Commission of the transitional Government. Lutundula was a member of the opposition in government and was appointed as the Chairman of the Commission. In June 2005, a final report was submitted to the Bureau of the National Assembly, concluding that from the selected 63 Mining contracts signed between 1996-2003 and object to review, the majority of contracts were illegal and had contributed little or nothing to the development of the country. The report included recommendations for renegotiation and cancellation of contracts, but the parliament of transition never discussed the result of the report (Kabemba 2008: 7; Lukanda 2014: 347, fn. 240).

According to Kabemba and Lukanda sixty-three⁴⁰ mining contracts were identified for the review process (Kabemba 2008: 6; Lukanda 2014: 347), according to the criteria, that they have been signed during the two civil wars (1996-1997 and 1998-2003) and during the transitional period (2003-2006) (Carter Center 2007 ; Kabemba 2008; Le Billon 2012; Lukanda 2014: 347).

These companies were mainly junior companies or individuals with no great experience in mining (Kabemba 2008: 6). Especially it was claimed, that there is a huge imbalance of what the (private) companies are benefiting out of existing contracts, in contrast to the government of the DRC. One example is the state own enterprise Gécamines, which once controlled nearly the whole industry and now has just minority positions in private mining projects (ibid.).

The interministerial Commission for the review of mining contracts (Revisitation Commission) was officially launched by the Minister of Mines, Martin Kabewelulu in April 2007 (Carter Center 2007: 2; Global Witness 2007:4)⁴¹. As Global Witness stated, this announcement „is one of the few official documents on this issue which is widely available“ (Global Witness 2007: 4). The Commission started working in June 2007, with a working mandate of three month. The Commission had a plenary, with all the members and the chairman, and three sub- commissions, each examining a proportion of contracts for review⁴² (ibid.). The objectives of the Commission, stated in the decree, were to review the „partnership contracts concluded by the state and or public companies with private investors in the mining sector and assess their impact on the DRC's public companies and national development“ (Lukanda 2014: 348). In addition, the Commission was supposed to deliver recommendations for terms and conditions under which the contracts should be renegotiated in order to correct imbalances (Kabemba 2008: 9, Lukanda 2014: 348, 349). The nature of the Revisitation Commission had no legal status, but corresponded with an ad hoc technical structure, was answerable and reported to the Ministry of Mines (Global Witness 2007: 5; Kabemba 2008: 9). The Commission was constituted of 28 members of the government and civil service, including representatives from the presidency and diverse ministries like the Ministry of Mines providing the Chairman by his Principal private Secretary (*Directeur de Cabinet*) (Carter Center 2007: 13; Global Witness 2007: 5; Kabemba 2008: 9)⁴³. The criteria or terms of reference for the review process have

40 It seems that there is a lack of clarity about the amount of contracts reviewed. Global Witness for example, is speaking of 60 contracts which have been listed from the Ministry of Mines, and complained, it was assumed this would be the complete list of contracts for review. But the list merely suggests, that these 60 contracts, have been only the contracts which have been submitted to the office of the Minister of Mines, hence, it is not a complete, nor definite list (Global Witness 2007: 8). Le Billon in contrast, speaks about 61 contracts, which have been issue of the review commission (Le Billon 2012: 79). As a matter of this study, the reviewed contracts by the Commission are determined as 63 contracts, referring to the information of Lukanda and Kabemba.

41 The Minister of Mines signed the Memorandum for the revision of mining contracts and the commission was itself created on the 20 April 2007. It included the timeframe of three months to complete the work --from the 15th of May to the 15th of July 2007 (Kabemba 2008: 9).

42 For more details of the Commission's day-to day- work, see Global Witness (2007: 5).

43 In Detail: The *Directeur de Cabinet* (Principal Private Secretary); 2 advisor from the ministry of mines; 2 delegates

not been made public, after the Commission began its work. Accordingly, Global Witness pointed out, that even though these term of reference are not confidential, not the criteria⁴⁴ and the methodology, nor the plan for the review process have been made public⁴⁵.

“The Revisitation Commission’s report, completed in November 2007 but not publicly released until March 2008” (Le Billon 2012: 79), categorised the reviewed mining agreements into three sections. Category A constituted the category of those arrangements, which can remain unchanged, category B embraced those contracts, which would require renegotiation and category C stood for the cancellation of contracts. Not a single agreement was listed in category A, 40 contracts were put into category B (Lukanda 2014: 350), and 23 mining agreements into category C (Le Billon 2012: 79; Lukanda 2014: 350). In the Commission's report, there was no guideline or outline and recommendations for the future renegotiation of contracts included⁴⁶. Also no reference has been made to acts of illegality and consequent disclosure to relevant judicial bodies (Lukanda 2014: 351). “As of writing this article [published in 2014] there had been no disclosure on how the Commission chose these agreements and if the process of auditing them include any prioritization“ (ibid.: 350). According to this aspect, the *Directeur de Cabinet* stated to Global Witness, that there have been some priorities for the review of certain contracts, starting with „the biggest“ (Global Witness 2007: 8). What exactly this would mean, understanding „the biggest“ for example in financial terms, or those with the most serious problems remain unspecified and unclear (ibid.).

The decree for the establishment of the Commission stated that external advice was allowed, without defining any details (Global Witness 2007: 13; Lukanda 2014: 349). Further, the Commission asked several actors, like the non-profit organizations Carter Center and the Open Society Initiative for Southern Africa (OSISA), and the Benjamin Rothschild Bank to accompany

representatives from the Presidency; 2 delegates from the prime Minister’s office; 2 delegates from Ministry Finance; 2 delegates from Ministry in Charge of the Budget; 2 delegates from Ministry Justice; 2 delegates from Ministry without Portfolio; 2 delegates from Ministry in charge of Industry; 4 delegates from General Secretary of Mines ; 4 delegates from Cadastre Minier; 4 delegates from technical institutions, see Kabemba (2008: 9).

44 However, Global Witness requested a copy from the Ministry of Mines and received draft version in comparison to other observers in August 2007 (Global Witness 2007: 5): „1. the distribution of share capital within joint-venture companies, 2. The breakdown of the allocation of revenues from joint venture companies, 3. Respect of the social clause, 4. The disempowerment of statutory management bodies of the joint- venture company in favour of the operating company, the subsidiary of the majority partner, 5. The confidentiality clause with respect to the principles of the Extractive Industries Transparency Initiative“ (Global Witness 2007: 6).

45 Global Witness also requested the plan or methodology for the process and received one. The methodology was structured into three phases, embracing first the collection of information of the contracts, infrastructure, production and the social clause, second the definition of terms of reference, examining the legality of the contracts, the context of signing and the financial balance between the parties and third an analysis of the contract itself (ibid.).

46 “At the end of October [2007, one week before the Report was submitted to the government], members of the Commission leaked a chart from the report. The chart classified all of the contracts as requiring renegotiation or termination; none of the contracts were deemed sufficient to be left 'as is'. Commission members reportedly released this chart because they feared that their conclusions might be altered in the subsequent political process. It appears likely that the leaked document does represent the actual Commission recommendations as to disposition of the contracts that they analysed“ (Carter Center 2007: 5).

the process. According to the Carter Center, OSISA gave some direct support to the Commission, especially in mobilizing civil society experts to exercise an own independent review. In contrast, according to the Ministry of Mines, the Benjamin Rothschild Bank stepped out of the process, because they could not deliver *pro bono* advice (Carter Center 2007: 3). But there has been some confusion about the exact role of these actors in the process, especially about the relationship with the Rothschild Bank⁴⁷.

In addition, because of the short timeframe, the *Directeur de Cabinet* pronounced to Global Witness, that if the required advice would be not available at the time needed, the Commission would not take the external advice into account for their considerations (Global Witness 2007: 14). He also made clear, that the work of the Commission is a governmental process, which is not bound to the recommendations and exercises of other organisations (ibid.).

But the Commission invited five organisations⁴⁸ to take in an observer role in the process. The observers were appointed one month after the start of the Commission's work. However, it is unclear due to what criteria these organizations have been chosen and which defined formal role they had in the process. The observers were allowed to participate and make comments in the sub-commissions and their sessions. But they were not allowed to participate in the plenary sessions, in those the reports got adopted, nor had they any documents or (previous) contracts in advance for preparation, only after request (Global Witness 2007: 16). Though, the attendance of these organisations have not been continuously, in contrast, only FEC and ANEP have been „the most conscientious, both in terms of attendance and participation“ (ibid.).

Affected communities living in the mining areas were not integrated in the review process of the Commission (Lukanda 2014: 350). Also the Revisitation Commission had limited financial support and budget from foreign donors, only Belgium provided significant funding (about US\$100,000) for legal advice through the Carter Center (Le Billon 2012: 79).

The Renegotiation Process

“Unlike the preceding stage, the Congolese government has disclosed the terms of reference applicable to the task force that proceeded with the renegotiation and cancellation of mining

47 “However, very little public information is available on its [the Benjamin Rothschild Bank] role or official relationship with the government- if any- in the context of this review“ (Global Witness 2007: 14). The Bank itself stated to Global Witness, that nor the DRC or any public entity of the DRC gave them a mandate for the review of financial aspects of the mining contracts (ibid.).

48 The five organisations invited: the *Centre d'études pour l'action sociale* (CEPAS, a Jesuit research institute focusing on social issues), the *Conférence Episcopale nationale du Congo* (CENCO, National Bishop's Conference), the *Fédération des Entreprises Congolaises* (FEC, Federation of Congolese Enterprises), the *Association Nationale des Entreprises du Portefeuille* (ANEP, National Association of Public Companies) and *Avocats Verts*, an 'activist' (Lukanda 2014: 350) NGO working for environmental protection and rights of human communities (Global Witness 2007: 15, 16).

agreements“ (Lukanda 2014: 351). These terms embrace 15 aspects, whereas 14 aspects are focusing on the renegotiation. This guideline stresses especially the importance of adjustments of financial and management aspects of the mining agreements for the Congolese Government. In contrast, the terms of reference entail no conditions for social or environmental standards of mining operations.

In September 2008, the Government appointed a task force for entering into renegotiations with those companies, classified for negotiation after the review. But the appointed team also started renegotiation with some partnerships, whose agreements should have been cancelled, in regard of the Commission's report. Why and due to what reason and justification is unclear (Lukanda 2014: 356). As the Carter Center (2009) states, after „months of silence, the government turned precipitously to renegotiations without independent financial or legal expertise“.

During the following month, the parastatal mining companies renegotiated agreements with the majority of those companies, subject to the review process. However, with the most important economic actors, like Tenke Fugurume (Freeport McMoRan) and First Quantum no amended agreement was reached. „When Minister Kabwelulu declared the end of the review, he indicated that contracts with those companies would remain largely unchanged“ (Carter Center 2009). In contrast, Lukanda reported, that with five out of the six important economic actors (AngoGold, Ashanti, Banro, FirstQuantum, FreeportMcMoRan, Gold Fields and Mwana Africa) an agreement was reached, except with FirstQuantum which's contract was cancelled later (Lukanda 2014: 356). Several companies accepted the aim of the government to renegotiate existing agreements, but to a lesser degree than formulated in the terms of reference (ibid.). However, the Congolese government did reach some improvements compared to the original agreements. The Government achieved an increase in the state owned enterprise share in partnerships, from less than 20 percent to about 30 percent, the integration of representatives of the state owned companies at the level of management of the partnership and an increase in the amount of transfer bonus and royalties (Lukanda 2014: 356). After the process of renegotiation, some contracts have been disclosed by the Ministry of Mines⁴⁹.

3.3.3 Evaluation Of The Impact Of Resource Concessions For Good Governance

Evaluation Of Legitimacy

Now to the evaluation of the principle legitimacy in the review process of the DRC.

The Commission with the task to review and renegotiate was interministerial and the members were

⁴⁹ Ministry of Mine, DRC (n.d.): Les Contrats Minier. Après la Revisitation. URL: <http://minesrdc.cd/fr/index.php/contrats-des-ressources-naturelles/contrats-miniers>, 09.12.2015.

appointed by the Ministry of Mines. Hence, it seems there has been indirect participation through members of the government, which have been elected. Therefore it could be assumed that the members of the Committee are representing the intentions „of all men and women“. But in regard of the members of the Commission, the review process has been target of criticism. For example, it was claimed the Commission was set up of individuals from government ministries, which lacked of demanded control against political influence and the necessary expertise required for the complex review process. Also after the election, individuals who strongly profited from former mining deals became members of the new government (Global Witness 2007: 11; Kabemba 2008: 11). According to this argument it should be questionable whether (all) the members of the Commission have maintained their integrity⁵⁰ and represented the intentions of the population and influenced the decision-making in their interest. But nevertheless, in the framework of this analysis, it was not possible to find evidence for this argument, in contrary, here the assumption implied that elected representatives perform according to the intention of the people, in accordance to Kabemba (2008: 11).

In the review process of the DRC, also observers from the civil society were allowed. But especially, regarding the late appointment of the observers, the lack of possibilities of participation in the plenary and the lack of clarity of their role allows some evidence that „in practice, opportunities for Congolese NGOs to provide meaningful input into the process have been limited“ (Global Witness 2007: 17). The Government did not explain why choosing exactly those five observers and the (late) information provided for a constructive participation of the observers has been missing⁵¹. Hence it seems here, like the participation of NGOs has been more a superficial one. Now to the aspect of consensus orientation of the review and negotiation process in the DRC. How the decision were made in the review process or what strategy was used in the renegotiations is not known. Therefore, only the outcome of the review and renegotiation process could be evaluated in this work. The study here might suggest the argument, that the recommendations, or better the categories built for the resource concessions agreements had not been (fully) followed in the renegotiations. Lukanda also states, that there is some evidence, although agreements have been put in the category “cancelled”, they have been renegotiated. Hence, this is one factor which might suggest, that the renegotiation process might not have been in the best interest of the DRC. In addition, the outcome of the renegotiated contracts was difficult to analyse in the framework of this study, due to a lack of contracts and information disclosed. But according to the scholar Lukanda,

50 “Legitimacy also requires that governing actors exercise their authority with integrity, in that they declare any conflicts of interest, do not seek to manipulate outcomes to their personal advantage, and behave honestly” (Lockwood et al. 2010: 7).

51 See also Section 3.1 for the principle of transparency, pp.14,15.

only some adjustments, an increase in the partnership share of state owned companies and some short term gains have been reached. Therefore, the here made examination ascertain some improvements to the agreements before, which is embedded in „fostering“. On the other hand, the process in the DRC could be further seen as “missed opportunities” (Carter Center 2009) for a better result and therefore leads to the assumption, that the principle of legitimacy could have been at least fostered on a larger scale. This direction of the findings is also similar to the judgement of John Stremlau, Vice president for Peace Programs of The Carter Center: "At critical moments, the government chose to forgo international cooperation and transparent procedures. This undermined both the legitimacy of the process and any confidence in the outcome" (Carter Center 2009).

Evaluation Of Transparency

In the case of the DRC review process, there has been an official announcement of the process, which can be seen as the Commission made the process „visible“. But neither the criteria nor the terms of reference for the review process have been made public after the Commission began its work. Only after request, the terms of reference have been made (selective) available, like to Global Witness. This might be a sign, that the process could not be evaluated as predictable or understandable, due to the lack of disclosing rules or plans. But after the review process, the resulting Report of the Committee has been made public in March 2008. However, this final report has been made accessible, after quite a long period. Due to the fact, that the Commission ended the review process by mid July 2007. Hence, in regard of this relevant information, the release of the document might not be described as timely. Concerning the review process, the Commission invited (after the start of the process) several organisations as observers, but they did not have access to the relevant documents in advance, like the original contracts which are subject to the process, only after request they received a copy.

The renegotiation process started with the disclosure of the terms of reference for the renegotiations. But as mentioned above, also contracts have been renegotiated which were put in the category of “cancelled” in the review report. Hence, neither was the decision to renegotiate instead of cancellation explained, nor might the renegotiation process be described as transparent. The appointed task force reached new agreements with the companies, but only selected agreements has been plainly made (only in French) public on the Website of the Ministry of Mines, without a statement of the selection. Therefore, the selective disclosure of information might not be seen as complete, and consequently the process as understandable.

As a result from the here analysed aspects, the evidence suggests that even though some relevant information have been made public, and hence transparency could be fostered, on the other hand

the lack of clarity of selective disclosure of relevant documents and the time delay, might make it difficult to describe the process as fostering transparency in a significant way.

Evaluation Of Benefit Sharing

Now to the advancement of the principle benefit sharing in the DRC's reappraisal process of resource concessions. Due to the limited framework of this analysis, it was nearly impossible to examine the improvements made, classified as sharing of benefits. Because neither all the contracts have been published (and if, only in French), nor a similar “Summary of the Gains” of the renegotiations, like in was the case in Liberia, have been published in English (or French), it is difficult to analyse possible improvements under the term of benefit sharing. Only it can be assumed, that as shown above, already in the terms of reference for the renegotiation process there have not been a focus on increasing social and environmental standards and mentioning parts of benefit sharing. Therefore, on the basis of the evaluations of other scholars, it was said that the renegotiation process merely brought (tiny) adjustments in the contracts and hence, a significant advancement of sharing of benefits might not have been achieved.

As shown for the case of the DRC, the evaluation of the review and renegotiation process was partly difficult. The principle of legitimacy, might be seen as fostered, due to the indirect participation guaranteed through the elected Commission members and direct participation through the attendance of observers. But, as demonstrated previously, several concerns and criticism about the integrity of the members, the constrained practical impact of the observers in the decision-making process and the limited outcome of renegotiations might at least confine the extent to what legitimacy could be fostered in the reappraisal process. Also regarding to the principle of transparency, the results of this analysis are mixed. The Government started the process visibly, and also the disclosure of the report of review and (some) plain contracts might advanced transparency. On the other hand, the lack of complete and timely disclosure of other relevant information, the existence of several uncertainties, for example about the crucial information of the amount of contracts reviewed and the selective, unexplained release of information might have weakened the promotion of transparency to quite a great extent. In addition, the principle of benefit sharing, could not be (sufficiently) analysed due to the lack of provided information and publication. As a result, the reappraisal process of resource concessions in the DRC might have fostered the principles to some extent, but simultaneously limited the advancement of good governance, regarding to the above discussed factors.

4. Conclusion: Management Of Resource Concessions As A Mean To Foster Good Governance And Peacebuilding. Comparing The Two Cases Of Post- Conflict Liberia And The Democratic Republic Of The Congo

This study was analysing the question to what extent the management of resource concessions, here the process of review and renegotiation of such, was fostering good governance in post- conflict Liberia and the DRC. First the debates in the literature around peacebuilding, good governance and the natural resource management has been outlined and key concepts, such as conflict resources defined. Hence as demonstrated, the advancement of good governance in managing natural resources in post-conflict environments might be seen as one part of overcoming the paradox of the *resource curse*. Further, the three principles of legitimacy, transparency and sharing of benefits have been in the centre of the analysis. These aspects have been defined and adopted for the purpose of this study in the context of PCNRM. The reappraisal and renegotiation thus is representing one part of PCNRM, and resource concession management as a mean to (re-)establish aspects of good governance and furthermore rebuilt trust in the post-conflict government. These processes are understood as a tool to maximise the revenues out of these concessions, renegotiate unfair contracts and generally advance the benefits for the people of the resource wealth of their states.

In this study, the review and renegotiation process of post- conflict Liberia and the DRC have been selected as case studies, concentrating on the governmental process. Both states, Liberia and the DRC are wealthy in terms of natural resources, which could be the basis of prosperity and development. But as shown, *conflict resources* instead fuelled wars in both countries, natural resources have been target of corruption and the main population have not been benefiting from their country's resource wealth. In addition in the year 2003, Liberia and the DRC signed peace agreements, under strong international pressure and support. In each case, this was followed by first, a Transitional Government while the national and international efforts prepared post-conflict elections. Linked to the growing awareness in the literature that a „good“ management of resources of war- torn states could be a main factor for long- lasting peace. Also the review of concessions and renegotiation can contribute to peacebuilding and good governance. As demonstrated, both new elected Presidents, Ellen Sirleaf in Liberia and Joseph Kabila in the DRC launched to review and renegotiate concessions awarded during civil war and/ or the transitional period. Hence, it seems, after recapturing the background of the civil war and resources, the two cases have been quite similar.

In awareness of the limited framework of this work, the results to what extent Liberia and the DRC were fostering the here focused on three principles of legitimacy, transparency and sharing of

benefits have been quite different. While it seems, that in Liberia especially the legitimacy was fostered through the significant outcome and improvements for Liberia in comparison to the old contracts, the legitimacy of the process in the DRC might be evaluated as more critical. Even though, there has been for example, a formal invitation for some civil society actors to observe the process, the evidence suggests, however, after this analysis that the actual impact of direct participation has not been that high and might have been superficial. In addition, the outcome and consensus orientation during the process in the DRC, as well as in the results are weaker than the improvements made in Liberia. Also problematically, the amendments through the reappraisal process partly not could have been analysed in the case of the DRC.

In regard of the principle of transparency, the here analysed aspects suggests, that in both cases the transparency at least could be higher. Even though the transparency, as defined above, was not fulfilled completely, there probably have been made some progress compared to the practice of disclosure of information before. Whereas in the case of Liberia, some relevant documents have been kept confidential through the process, at least with reasoning this decision, in the case of the DRC only selected information have been made public, without explanation. This relates especially to the existing lack of justification for renegotiating contracts which should have been cancelled and the aspect of not implementing the proposed recommendations through the review process.

When it comes to the comparison concerning the aspect of benefit sharing, it is difficult to come to a conclusion. As shown above, the Liberian government achieved (relatively) great successes through the renegotiation process and hence also reached gains under the principle of benefit sharing. Due to the lack or selective disclosure of the relevant information provided by the government of the DRC and the here limited framework of analysis, it was on the other hand nearly not possible to examine this issue for the DRC. Nevertheless, as shown above, there have been reached some improvements after the renegotiations, but mainly economic gains. The DRC's priorities and aims for renegotiation are not mentioning social or environmental obligations, and therefore it might be reasonable to assume, that the principle of benefit sharing could not have been fostered.

Consequently, it was shown, that the two cases have been quite similar but with different outcomes in fostering aspects of good governance as a peacebuilding dimension through the review and reappraisal process of resource concessions. But interestingly, whereas the process in Liberia widely has been seen as a relative success, the government of the DRC based on this analysis could not show serious efforts towards good governance and may make it more difficult in the future for a long-lasting peace.

One constrain of the analysis focusing on the governmental process, however, might have been that

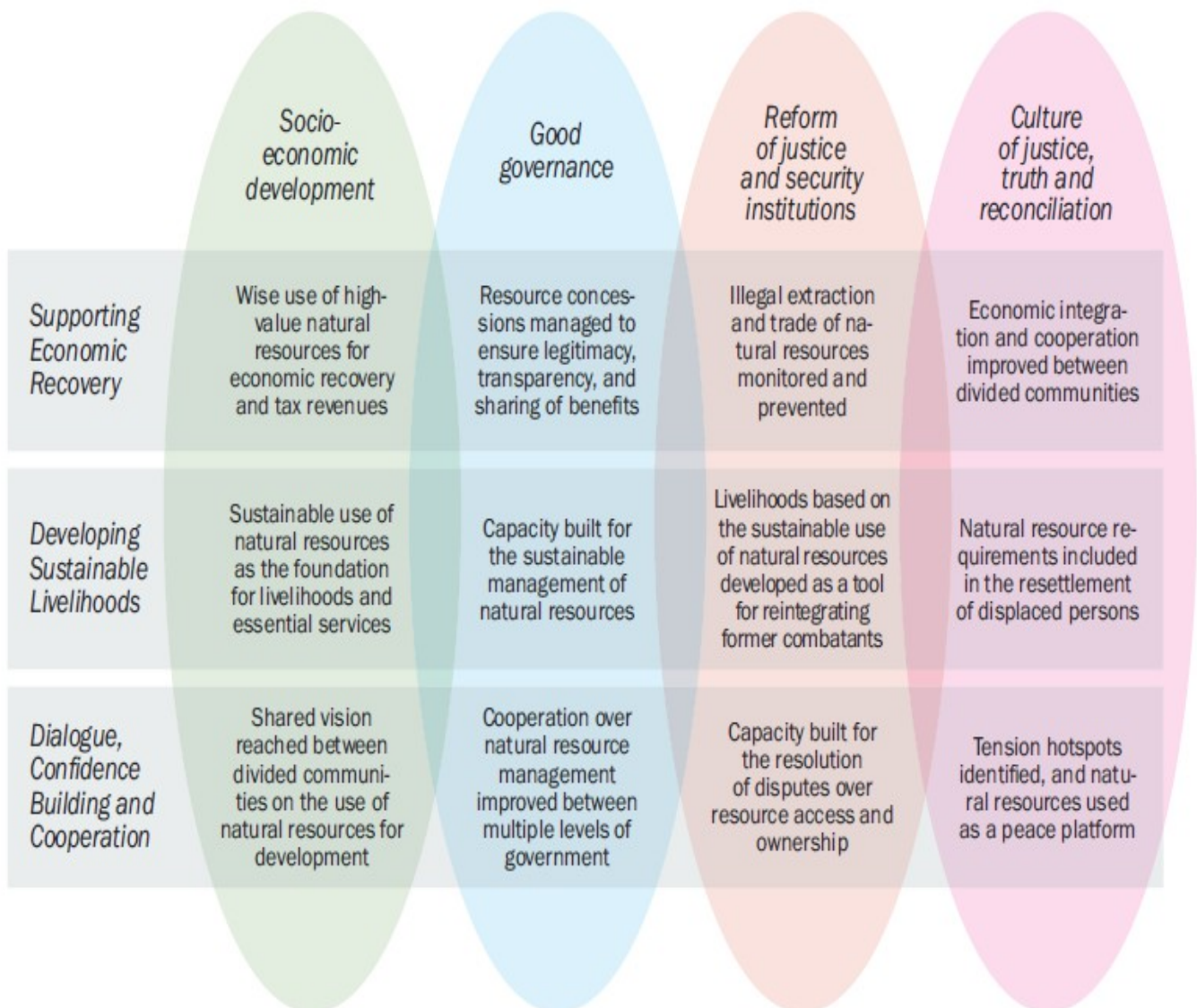
in the case of Liberia the Government „only“ exercised the review and renegotiation of two concessions independently. The remained resource concessions have been issue of the internationally supported GEMAP reappraisal process. Consequently, the broader framework of the DRC's reappraisal process of all concessions awarded during civil war and the transitional period might be understood as more demanding and therefore might determine the weaker result. On the other hand, as explained previously, the efforts of the Congolese Government to include international actors and support, like Liberia, could be described as limited.

So in regard to the results of this elaboration, post-conflict Liberia could fostered good governance through the reappraisal process of concessions to a greater extent than the case of post-conflict DRC. The scholars Kaul and Heuty (2009: 51) identified factors why the fast track process in Liberia lead to relative successful renegotiations and thus created new benefits for the Liberian people: First, the strong will and leadership of Sirleaf in managing the renegotiation process and the establishment of a direct reporting line between the negotiation team and the decision makers, second, the strategy used in the renegotiation based on consensus- building and third, the resources and capacities available linked to the „world-class“ advisor and therefore expertise (ibid.). Interestingly, if briefly looking at the case of the DRC, after this analysis, the findings might suggests, that these factors were not, or at least weakly included in the review and renegotiation process of the DRC. Neither might a strong leadership of the President recognized or a direct accountability and reporting manner, nor has there been significant external expertise or an agreement on a clear consensus strategy. For analytical reasons, it was not possible to deeply appraise this argument, but it might be an interesting question for future research.

Even though, each post-conflict state and dynamics are different, and hence also the resource concession management should be understood in the state's context, it could be interesting, if also external factors, like a „worldclass“ expertise, could provide one aspect for success.

Due to the fact, that at least 40% of the civil wars in the last sixty years have been connected to natural resources, there might be the need to draw lessons and develop guidelines, to support other post- conflict states managing their natural resources and reappraise and renegotiate resource concessions. Even though, it is representing just one aspect of peacebuilding related to a manner of good governance in post-conflict natural resource management, it might constitute one part of the chance towards a long-lasting peace.

Appendix I Environmental Opportunities For Peacebuilding Arranged By OECD Peacebuilding Pillars (UNEP 2009: 31)



Appendix II The Five UNDP- Principles Of Good Governance (Graham et al. 2003: 3)

Box 1: Five Principles of Good Governance	
The Five Good Governance Principles	The UNDP Principles and related UNDP text on which they are based
1. Legitimacy and Voice	<p>Participation – all men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their intention. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.</p> <p>Consensus orientation – good governance mediates differing interests to reach a broad consensus on what is in the best interest of the group and, where possible, on policies and procedures.</p>
2. Direction	<p>Strategic vision – leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.</p>
3. Performance	<p>Responsiveness – institutions and processes try to serve all stakeholders.</p> <p>Effectiveness and efficiency – processes and institutions produce results that meet needs while making the best use of resources.</p>
4. Accountability	<p>Accountability – decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organizations and whether the decision is internal or external.</p> <p>Transparency – transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.</p>
5. Fairness	<p>Equity – all men and women have opportunities to improve or maintain their well-being.</p> <p>Rule of Law – legal frameworks should be fair and enforced impartially, particularly the laws on human rights.</p>

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