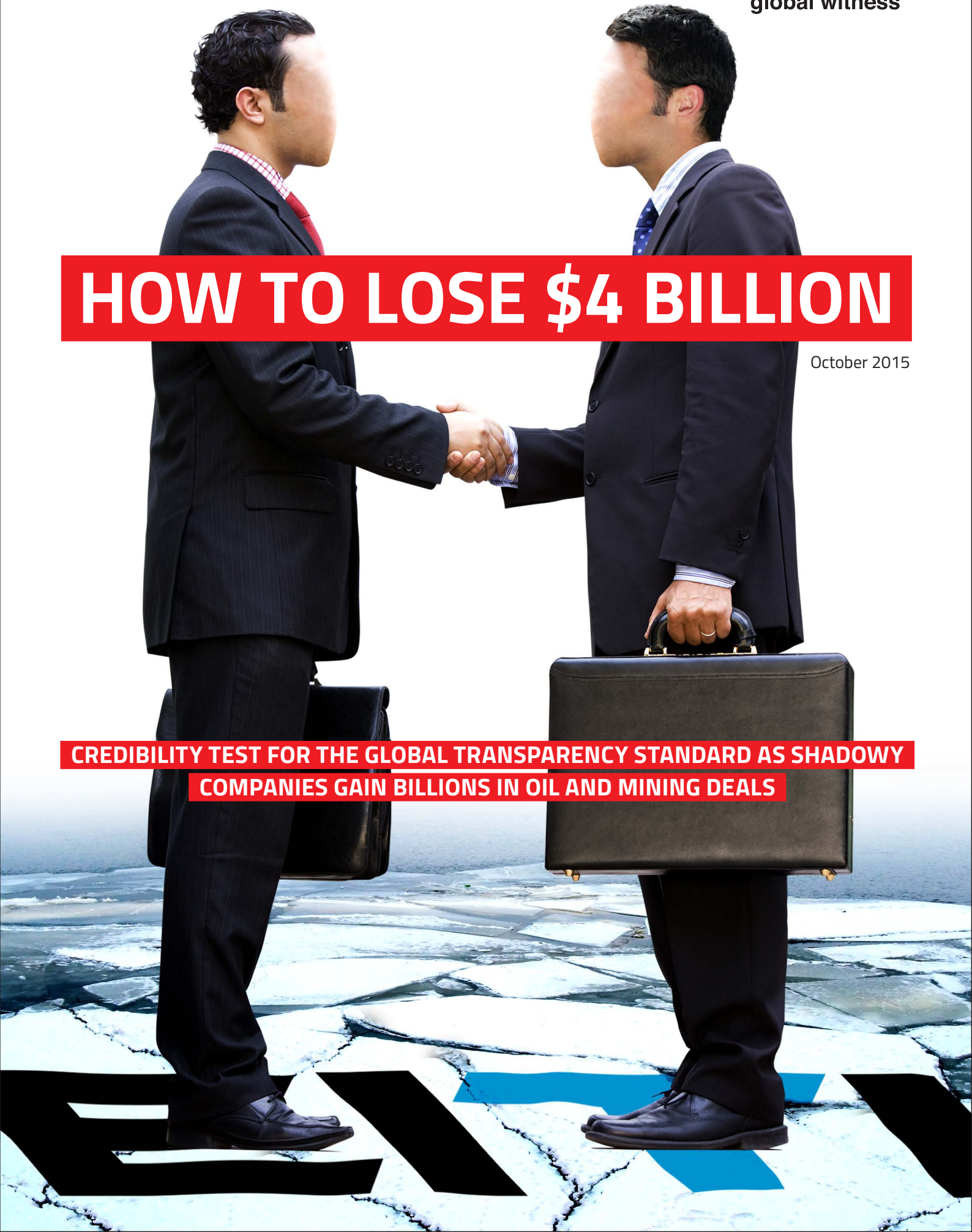
global witness

HOW TO LOSE $4 BILLION

October 2015



CREDIBILITY TEST FOR THE GLOBAL TRANSPARENCY STANDARD AS SHADOWY COMPANIES GAIN BILLIONS IN OIL AND MINING DEALS

CONTENTS

INTRODUCTION

Natural resources have the potential to drive development and prosperity in many of the least developed countries in the world. But the process of allocating the rights to extract valuable oil, gas, and minerals is often extremely un-transparent, and can be subject to high-level corruption. Frequently, anonymous companies are used to disguise the real beneficiaries of a deal, with huge resulting losses to the local population. Citizens have a right to know who owns the companies operating in their country, and to share in the benefits of resource extraction.

This report reveals how oil and mining assets worth a staggering $4bn have been allocated to companies whose ownership is obscure. In Nigeria, Democratic Republic of Congo and Angola, lucrative oil and mining licences were awarded to companies with hidden owners, diverting vast resource revenues to unknown private pockets. In a fourth country, Republic of Congo, a company whose beneficiaries remain uncertain – and which has historical connections to high ranking public officials - has recently received lucrative stakes in several oil fields. These deals deprive states of revenue that should be spent on education, health care and basic services for some of the most impoverished people on the planet.

Three of the four countries in this report are members of the Extractive Industries Transparency Initiative (EITI), while the fourth (Angola) wants to join. The EITI is the foremost global transparency standard in the extractives sphere and has driven welcome awareness and reform since its creation, but this report shows that corrupt deals can still take place in countries that are meeting current EITI requirements.

Making public disclosure of who truly owns and controls companies a condition of EITI membership would increase the scheme's credibility and effectiveness. It would deter corrupt officials from siphoning off public monies, help prevent conflicts of interest, create a fair and competitive business environment for local companies and allow investors to avoid the risk of partnering with companies secretly owned by elites. Ultimately, increased ownership transparency is indispensable if citizens are to benefit from their countries' natural resource wealth, rather than suffer as a result of the corruption and conflict it can inspire.

BENEFICIAL OWNERSHIP: A GLOBAL PRIORITY

Globally, governments have identified beneficial ownership transparency as key to fighting many forms of corruption, including tax evasion, money laundering and arms and drug trafficking. In 2014, the EU passed laws requiring its 28 member states to create registers of beneficial owners of companies. In addition, the UK, Mongolia, Philippines, Ukraine, Myanmar, Norway, Cameroon and Sierra Leone are among countries that have moved unilaterally to address beneficial ownership disclosure, either through their domestic EITI processes or via legal reforms.

Meanwhile, in 2013, the EITI agreed to make beneficial ownership disclosure a criterion for compliance from 2016. A ground-breaking provision inserted into the newly agreed EITI Standard recommended that countries maintain a publicly available register of the beneficial owners of companies that bid for, operate and invest in extractives[1]. This put the EITI at the forefront of global transparency standards and it deserves enormous credit for being one of the first organisations to address this issue.

SOME PROGRESS IN PILOT COUNTRIES

Eleven EITI member countries volunteered to pilot beneficial ownership disclosure between October 2013 and September 2015. Global Witness' analysis shows that some progress was made, notably by the

Democratic Republic of Congo[2]. However, a refusal by companies to provide information, and a lack of understanding of what a beneficial owner actually was, impeded progress and presented barriers to greater transparency[3]. The International Board of EITI had agreed that beneficial ownership transparency should become a requirement from 2016 (subject to successful piloting), but during the pilot process disclosure of information was only encouraged, not required. This meant that companies could simply choose not to participate, in spite of the fact that disclosure does not require any particular expertise and relates to ownership information companies should already hold to satisfy anti-money laundering requirements[4]. Some companies may have believed beneficial ownership disclosure was beyond their EITI obligations; others may have had things to hide.

It should not be not the job of resource-rich governments or the EITI to 'hunt' down company ownership information. Companies should recognise the benefits of greater transparency to their shareholders and investors and volunteer accurate and up to date information on their real owners. Yet, the EITI and its member states have an important role to play in encouraging increased transparency and setting a clear standard for companies to reach. Governments of EITI member countries should actively encourage EITI participation by companies operating on their territory, using legislation or by attaching conditions to oil and mining permits if required.

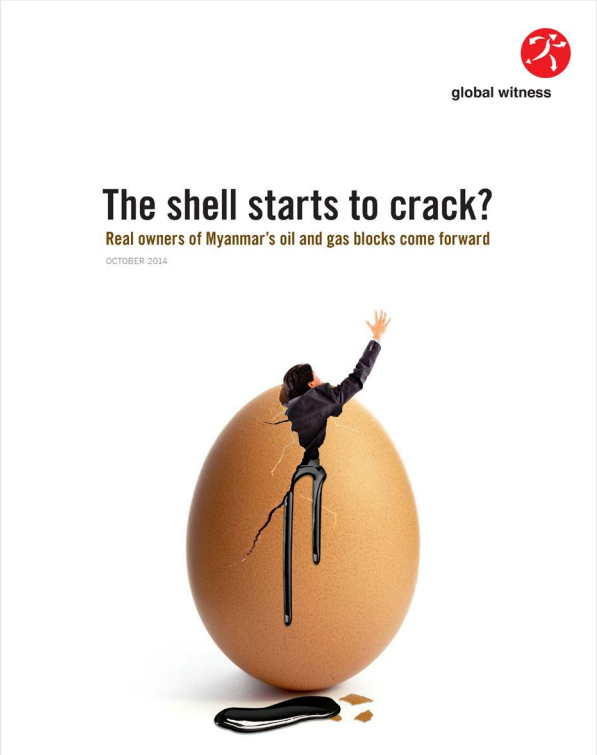
"In many cases, the identity of the real owners – the 'beneficial owners' – of the companies that have acquired rights to extract oil, gas and minerals is unknown, often hidden behind a chain of corporate entities. This opacity can contribute to corruption, money laundering and tax evasion in the extractive sector."[5]

Clare Short, Chair of EITI, ahead of the G20 conference in November 2014

A DEADLINE IN JEOPARDY

The EITI may have been at the vanguard of efforts to increase ownership transparency but, as 2015 draws to an end, it now risks missing its own deadline. Resistance and inertia from some elements of the EITI International Board and permanent secretariat has put this ambition at risk. It will be up to the representatives of oil, gas and mining companies, the implementing and supporting countries, investors and the civil society organisations, that together make up the EITI International Board, to make sure the original ambition is not compromised[6]. The 2013 Standard must not only be upheld, but reinforced with firm requirements around beneficial ownership disclosure, keeping pace with today's corruption risk.

This is a credibility test. The EITI can continue to lead the way, or it can fall back from its commitment, thus enabling state looting to continue and perpetuating the corrupt power relationships plaguing resource-rich countries. Failure to act will mean that EITI members will continue to lose billions in potential revenues from oil, gas and mining, as a result of opaque deals with companies whose ownership is hidden. As these are some of the poorest countries in the world, it is money they can ill-afford to lose.



Global Witness, "The shell starts to crack", October 2014

EITI Q&A

What is the EITI?

The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes greater transparency throughout the value chain in the oil, gas and mining industries. The process is overseen by the EITI International Board made up of governments, companies and civil society representatives[7].

How does it work?

Each year, a multi-stakeholder group ("MSG") within each EITI member country produces a report on oil, gas and mining activities. Governments, companies and civil society representatives have an equal voice and decision making power on the MSG. Companies report all payments to government bodies for extractive activities that year, and government bodies report all payments received, as well as other information relevant to the value chain. Any discrepancies in the reported payments are investigated by an independent administrator appointed by the MSG, empowering civil society and other stakeholders to hold the dealmakers to account.

How many countries are involved?

There are 48 countries involved in EITI, known as "implementing countries". Twenty-seven of these are listed as "compliant" by the EITI Secretariat (the current requirements are set out in the "EITI Standard", which was agreed in 2013). A further 16 are "candidate" countries, having not yet produced a report which complies with all requirements, and five have had their compliant or candidate status suspended[8].

How many companies are involved?

Over 90 companies have become EITI supporting companies, meaning they have publicly declared support for EITI and, in some cases, contribute funding to the management of the initiative[9]. Many hundreds more companies participate by contributing information to EITI countries' reports. Such participation is voluntary unless the country has legislated otherwise.

What are the requirements?

The full requirements are set out in the current EITI Standard, which was strengthened in 2013 to include greater disclosure of licence allocation rights, production data, social impact and subnational revenues. The EITI Standard has also improved the protection of civil society's role in decision making processes on natural resource governance issues by incorporating a "Civil Society Protocol", the current version of which came into force as of 1 January 2015[10].

What sanctions apply to countries who fail to meet the EITI Standard?

Low participation by companies can lead to a country being deemed non-compliant. Several countries have been suspended from EITI for failing to report on time. One country, Azerbaijan, was downgraded from compliant to candidate status in 2015 following vicious repression of activists and journalists in breach of the Civil Society Protocol.

What does the EITI say about beneficial ownership of companies?

The EITI Standard recommends that the beneficial owners of private companies which bid for, operate or invest in extractive industries should be made public[11]. This is already mandatory for government and state-owned enterprises and is due to become a requirement for all companies from 2016, subject to a successful pilot process.

What is the pilot process?

A scheme to pilot beneficial ownership transparency was initiated in 2013. Eleven countries volunteered to participate: Burkina Faso, Democratic Republic of Congo, Honduras, Kyrgyz Republic, Liberia, Niger, Nigeria, Tajikistan, Tanzania, Togo and Zambia[12].

What happens next?

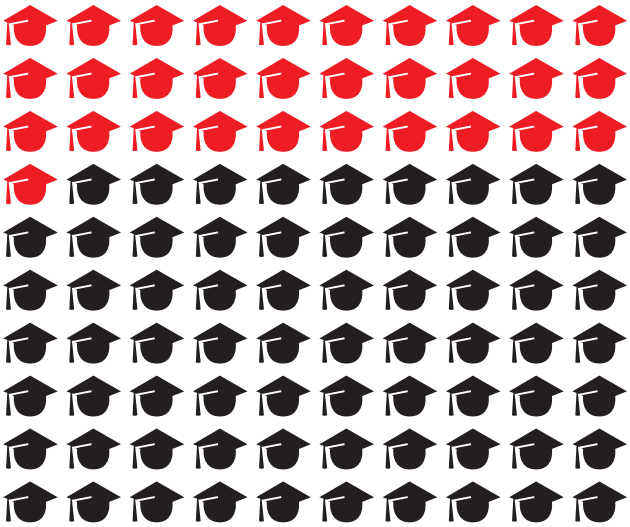
The EITI International Board is due to meet in October in Berne and in December in Kiev and will decide whether to make beneficial ownership disclosure by companies a full requirement of the EITI Standard.

CHAPTER 1 – Nigeria's missing billion

How anonymous companies made $1.1bn disappear in a single deal

In 1998, Dan Etete, the then Nigerian Oil minister, awarded a company called Malabu Oil and Gas a huge oil block off the West African coast called "OPL 245", without publicly declaring that he was an owner of the company. When Etete sold the licence on, he and his fellow anonymous owners, together with five other companies, pocketed some US$800m dollars that rightly belonged to the Nigerian people.

Had beneficial ownership disclosure been required, it is very likely this deal would never have gone through. It's not known how many other deals in Nigeria have involved secret payments to companies connected to ministers or other public officials. If the EITI required disclosure of beneficial owners it would pave the way for real transparency in the country.



AN ESTIMATED 5.5 MILLION GIRLS ARE OUT OF SCHOOL IN NIGERIA.

$1.1 BILLION COULD HAVE PAID FOR 1.7 MILLION OF THEM TO GO TO SCHOOL FOR 5 YEARS EACH

55,000 CHILDREN =

ICED CHAMPAGNE

The OPL 245 block was purchased in 2011 by leading European oil companies, Shell and Eni, who paid US$1.1bn into an account set up by the Nigerian government. The government agreed to transfer the same amount to a Nigerian company called Malabu Oil and Gas, which was secretly owned by former oil minister Dan Etete[13]. Malabu eventually passed US$800m of the money to a network of Nigerian companies with anonymous owners[14], which were apparently vehicles for paying others involved in the deal.

Shell and Eni deny paying money to Malabu[15]. Yet court evidence shows that they knew that the funds would go to the company. Over a period of two years, both Shell and Eni negotiated directly and indirectly with Malabu, including a face-to-face meeting between Shell managers and Etete over "iced champagne"[16], and dinner between high level Eni executives and Etete in a luxury restaurant in Milan[17]. All of this only came to light because two of the middlemen involved in facilitating the deal sued Malabu for unpaid fees in London and New York.

THE FALL OUT

The OPL 245 deal has now been investigated by authorities in three countries:

- In a 2014 vote, the Nigerian House of Representatives called on the Nigerian government to cancel the deal, describing it as "contrary to the laws of Nigeria"[18]. Nigeria's Economic and Financial Crime Commission is also investigating, and recently questioned Dan Etete[19]. With a new government now in power publicly committed to rooting out corruption, there is a risk that Shell and Eni will have their exploration rights revoked because of the way the block was acquired[20].

- In the UK, police have been investigating allegations of money laundering related to the deal.

- In Italy, both the current and former CEOs and other senior managers at Eni – Italy's biggest company – have been named as suspects in a corruption inquiry. Italian authorities have reportedly stated they believe over half a billion dollars from the deal was intended as bribes for Nigerian public officials[21].

- Around US$190m of the proceeds of the $1.1bn payment has been frozen in UK and Switzerland at the request of Italian prosecuting authorities[22].

The proceeds of the OPL 245 sale should have benefitted Nigerian citizens, but instead were given to a company secretly controlled by the former oil minister and transferred to undisclosed recipients. This outrageous abuse of Nigerian public authority for the profit of high ranking officials and other unknown beneficiaries, conducted with the apparent knowledge of the international oil companies buying the block, was directly facilitated by the fact that the real owners of these companies were kept hidden.

NIGERIA AND EITI

"$1.1bn was diverted from the public purse, this needs to be recovered and we must get to the bottom of the role companies and individuals played in this heist."

Dotun Oloko, Nigerian activist

Documents seen by Global Witness show that US$800m of the original $1.1bn was transferred to Malabu Oil & Gas in late August 2011, shortly after Nigeria gained EITI compliance[23]. The 2009-2011 Nigeria EITI report noted a discrepancy around an additional US$207m retained by the Nigerian Federal government as a signature bonus for OPL 245[24]. As to the $1.1bn paid by Eni on behalf of itself and Shell into a Nigerian Government account for the oil licence, the report was silent.

This iconic case demonstrates why EITI must embrace beneficial ownership disclosure as a matter of urgency. The achievements of those responsible for implementing EITI in Nigeria will mean little if the conditions are retained which allow corrupt officials to use anonymous companies to divert billions of dollars from the impoverished population.

CHAPTER 2 – The cost of Democratic Republic of Congo's Secret Sales

How the citizens of the Democratic Republic of Congo (DRC) lost at least $1.36bn through secret sales to anonymous companies[25].

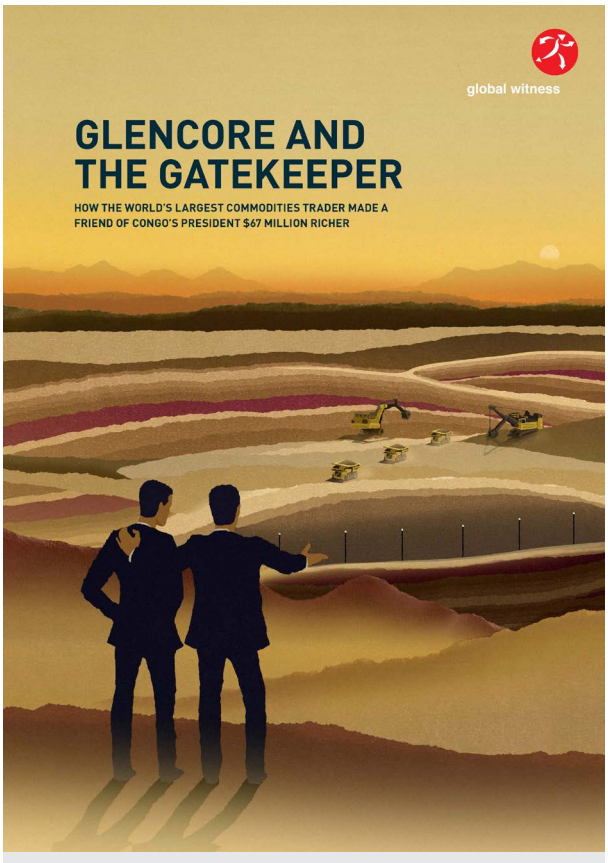
A string of deals in the DRC has seen lucrative cobalt, copper and oil rights sold in secret at a fraction of their commercially estimated value to companies with anonymous owners. These deals have deprived state coffers of over a billion dollars in lost revenue, benefiting instead the unknown owners of companies in secrecy jurisdictions such as the British Virgin Islands and Gibraltar. They point to a pattern of connivance between officials, middlemen and companies to secure privileged access to Congo's mineral wealth.

THE GATEKEEPER

At the heart of these deals is Dan Gertler, a controversial businessman and personal friend of the Congolese President, Joseph Kabila. In each of the cases below, assets were secretively sold to companies within an offshore network named Fleurette Group. The Fleurette companies then made vast profits by selling on the assets at much higher prices or partnering up with multinationals. According to its website, Fleurette is owned by a trust for the benefit of the family of Mr Gertler,[26] yet a full list of beneficial owners has never been published. Fleurette provided $20,000 in support to the EITI in 2015[27], but exactly who ultimately reaped over a billion dollars in profit from its dealings in the DRC is unknown.

Case 1: Kansuki Mine:[28] Estimated loss to the Congolese state: $116 million[29]

In 2010 and 2011, state-owned company Gécamines transferred shares in the Kansuki copper-cobalt mine to two companies associated with Fleurette Group. The DRC government transferred 75% of the mine to DRC-registered Kansuki Investments SPRL in July 2010. One month later, Swiss commodities giant Glencore bought 50% of Kansuki Investments, becoming operator of the mine and covering development costs through a loan[30]. In March 2011, Glencore then waived pre-emption rights over the remaining 25% of the Kansuki mine, recommending that this be transferred to Biko Invest Corp, a British Virgin Islands registered company Glencore described as "associated with Dan Gertler"[31] but whose full beneficial ownership has never been published. Biko obtained the stake for $17m, several times below commercial valuations, in a deal which was not disclosed until nearly a year later.



Global Witness, "Glencore and the Gatekeeper", May 2014

Case 2: Kolwezi mine:[32] Estimated loss to the Congolese state: $622.25 million[33]

In January 2010, Gécamines secretly awarded 70% of the Kolwezi tailings project to a group of British Virgin Islands companies known as the Highwind Group for a signature bonus of $60m[34]. Just a few months later, Highwind began to sell this asset to multinational Kazakh mining company ENRC. In June 2010, ENRC agreed to pay $175m for 50.5% of Camrose, the company which owned the Highwind Group and other associated concessions, and also to provide a substantial loan to Camrose including $60m in respect of the signature bonus. ENRC then acquired the remainder of Camrose in December 2014 for $550m. The sellers were three further companies registered in the British Virgin Islands, which according to ENRC were held by the Gertler family trust, but whose full beneficial ownership has never been disclosed[35]. In April 2013, the UK's Serious Fraud Office announced an investigation into ENRC's Africa dealings[36].

The T17 mine in Kolwezi run by Katanga Mining Limited, a subsidiary of Glencore.
CREDIT: Gwenn Dubourthoumieu

Case 3: Nessergy Limited. Estimated loss to the Congolese state: $149.5m[37]

In 2006, Gibraltar-registered Nessergy Limited paid a signature bonus of $500,000 to the DRC government for oil rights to an offshore block in disputed waters[38]. The deal took place between the first and second rounds of a Presidential election and without a competitive auction process. Seven years later, in 2013 (in a deal funded by Angolan state owned oil company Sonangol), Nessergy sold the block back to the Congolese government for 300 hundred times the original price, having conducted no major drilling[39]. As a full list of Nessergy's ultimate beneficial owners has never been published, it is unclear who reaped the $149.5m profit from this deal.

BENEFICIAL OWNERSHIP DISCLOSURE AND DRC EITI

"When foreign investors make extensive use of offshore companies, shell companies and tax havens, they weaken disclosure standards and undermine the efforts of reformers in Africa to promote transparency."

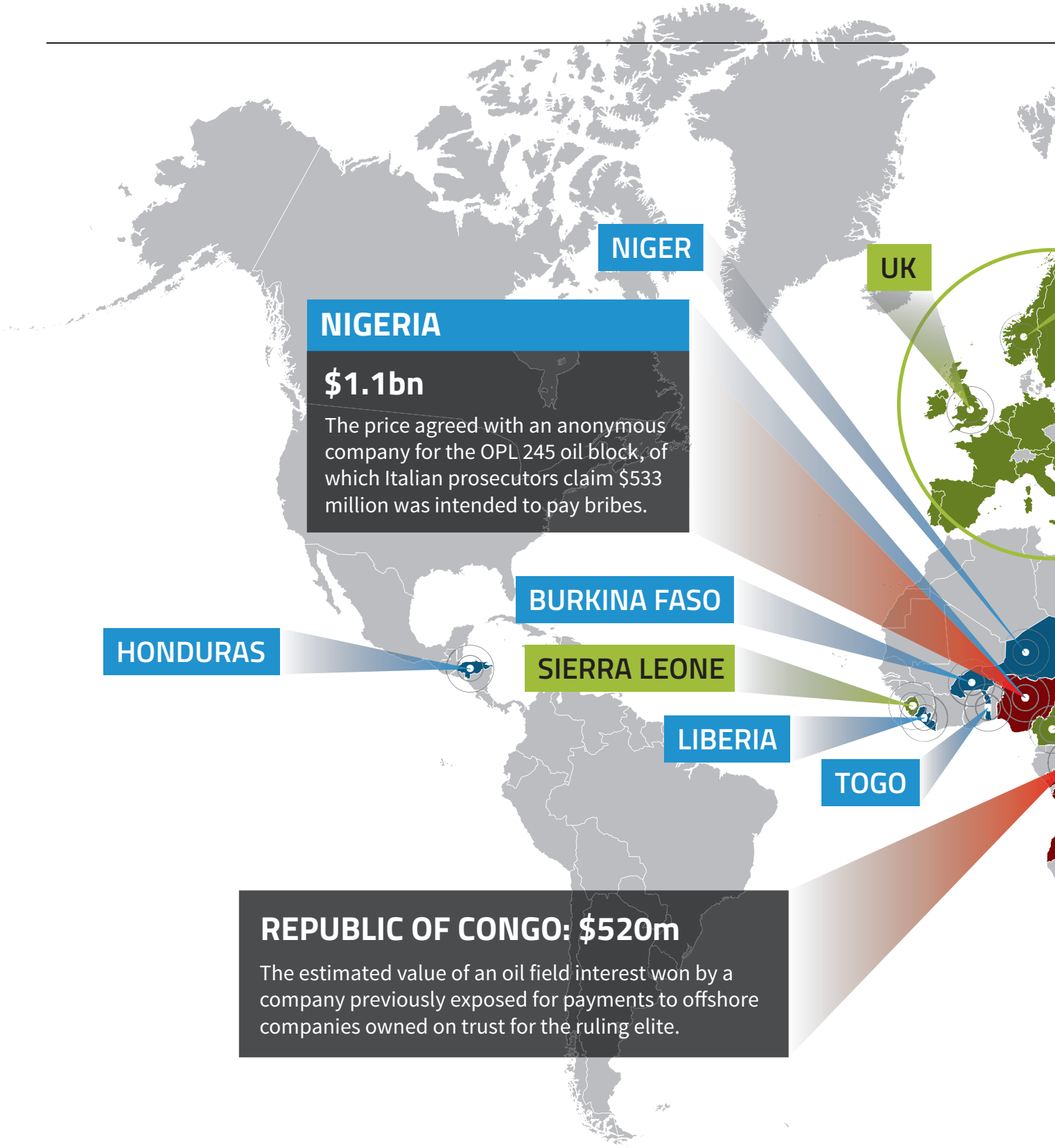
Kofi Annan, foreword to Africa Progress Panel report 2013

Dan Gertler and Fleurette Group vigorously dispute these allegations and maintain Gertler's companies paid fair prices for the assets[40]. Glencore and ENRC also deny any wrongdoing. The sums involved are staggering: the Africa Progress Panel reported that just five of Dan Gertler's deals (including the Kansuki and Kolwezi deals above) resulted in the Congolese state losing out at least $1.36bn: almost twice the DRC's annual spending on health and education combined[41]. By acquiring mining assets which have been subject to hidden ownership arrangements, Global Witness believes Glencore and ENRC – one current and one former issuer on the London Stock Exchange and two of the world's largest natural resource companies - risked complicity in potentially corrupt activities.

Having been declared EITI compliant in July 2014,[42] Congolese authorities must now investigate these deals and ensure the draft mining code includes robust conflict of interest safeguards and requires disclosure of the beneficial owners of all the companies that own existing permits or who bid for future ones. The DRC's pilot project secured at least partial beneficial ownership disclosures from an impressive 31% of private mining companies operating in the country, showing reform is possible and practical[43]. However, it is clear that a disclosure requirement – whether via local law or EITI – is needed to end the cycle of secrecy in which anonymous companies profit at the expense of Congo's citizens.

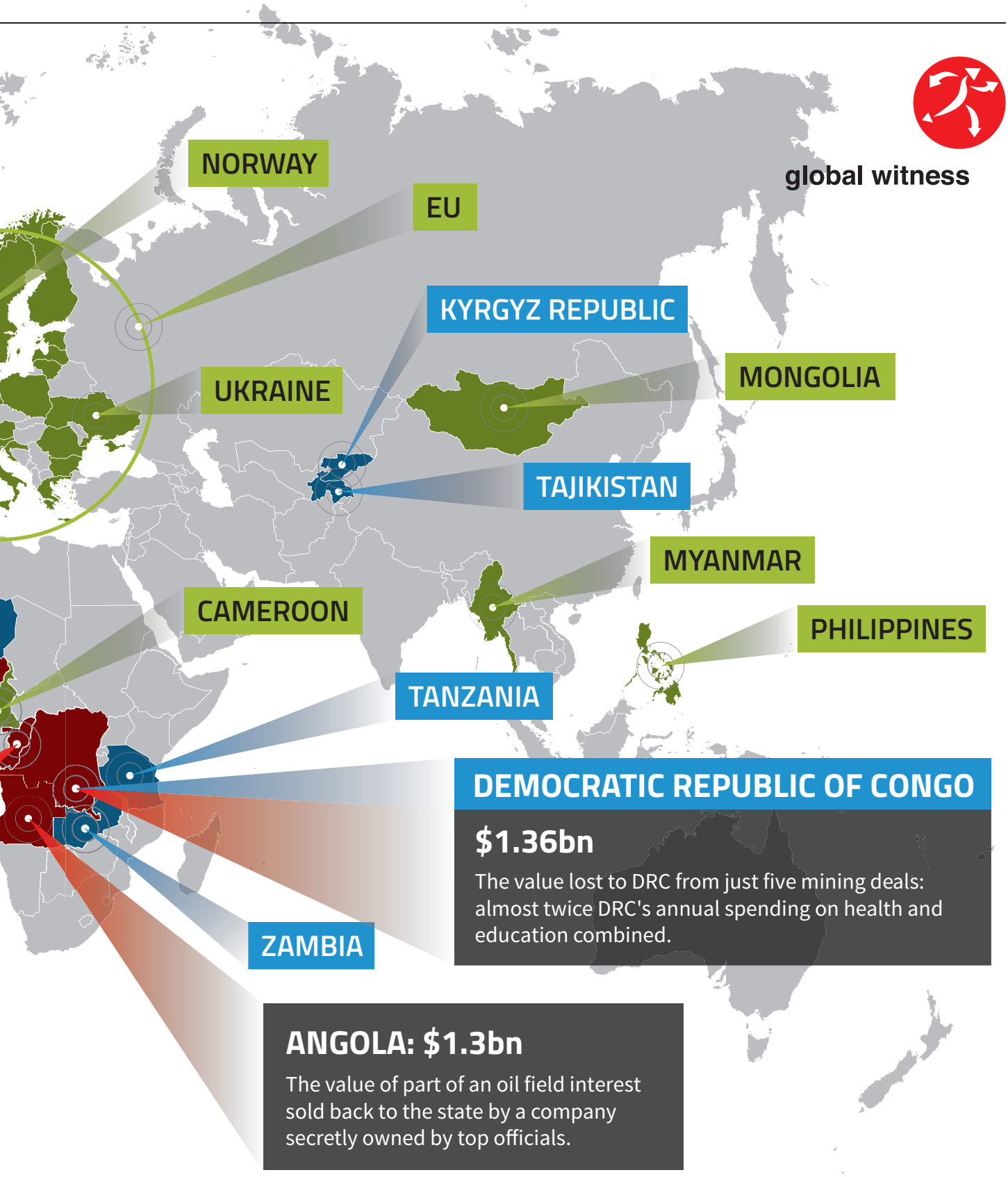
FOUR BY FOUR:

$4BN TO SHADOWY COMPANIES IN A HANDFUL OF OIL AND MINING DEALS IN FOUR AFRICAN COUNTRIES



COUNTRIES WHICH VOLUNTEERED TO PARTICIPATE IN THE EITI BENEFICIAL OWNERSHIP PILOT PROCESS

COUNTRIES WHICH HAVE MOVED UNILATERALLY TO ADDRESS BENEFICIAL OWNERSHIP DISCLOSURE, EITHER THROUGH THEIR EITI PROCESSES OR VIA LEGAL REFORMS



CHAPTER 3 – Angola

How a US-listed company was investigated over its local partners' anonymous owners

In 2010, Angolan state-owned oil company Sonangol awarded exploration licences over oil blocks 9 and 21 to US-listed Cobalt International Energy[44]. Two mysterious local companies received stakes of 10% and 30% and stood to make billions of dollars from the deal[45]. Investigative journalists in Angola and the UK revealed that the owners of these companies included three prominent public officials in Angola, prompting investigations by US authorities for potential violations of the U.S. Foreign Corrupt Practice Act (FCPA)[46]. Angola wants to join the EITI. For its membership to be meaningful, beneficial ownership transparency would be a critical condition, not only for the protection of public revenues, but for the sake of investors in international oil companies too.

UNKNOWN LOCAL PARTNERS

Behind the first of the local partners, Nazaki Oil & Gáz, were reported to be some of the most powerful men in Angola[47]. A 2010 report by anti-corruption activist Rafael Marques de Morais named the hidden owners as being Manuel Vicente, head of Sonangol at the time of allocation and now the Angolan vice-president; General Manuel Helder Vieira Dias ("Kopelipa"), head of the presidency's military bureau; and General Leopoldino Fragoso do Nascimento ("Dino"), a former head of communications in the presidency[48]. Vicente and Kopelipa confirmed to the Financial Times newspaper that they held their shares via another anonymous company, Grupo Aquattro Internacional[49]. Global Witness has been unable to trace the owners of the other company holding 10% stakes in the two blocks, Alper Oil Limitada.

As head of the Angolan state oil company, Vicente had a pivotal role in deciding which companies would be granted rights to this highly valuable oil block[50]. In their responses to the Financial Times, Vicente and Kopelipa denied any wrongdoing[51].

According to Tom Burgis' 2015 book, *"The Looting Machine"*, Nazaki transferred half of its 30% stake back to Sonangol in February 2013. The fee that Nazaki received (if any) has not been disclosed but bankers' valuations estimate that half of its 30% stake was worth $1.3bn, fourteen times its likely share of development costs to that date[52]. Cobalt's corporate filings indicate that Nazaki and Alper have now transferred their entire interests in the blocks to Sonangol[53].

ONGOING INVESTIGATIONS

Due to its associations with Nazaki and Alper,[54] Cobalt has been under investigation by the US Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) for potential violations of the FCPA (though the SEC has now dropped the case). On 4 December 2014, a class action lawsuit was also launched against the company regarding alleged FCPA violations in Angola[55]. Cobalt stated in its most recent financial statements that it has "complied with all requests from the SEC and DOJ with respect to their inquiry" and has "conducted an extensive investigation into these allegations and believes that [its] activities in Angola have complied with all laws, including the FCPA"[56]. It has since sold its Angolan fields for $1.8bn[57]. However, the ongoing investigation demonstrates the risks of doing business with anonymous companies, and should be a signal for other international companies seeking to do business with local partners where beneficial ownership information has not been disclosed.

Meanwhile, Rafael Marques, who originally exposed much of this story, recently received a six month suspended sentence for malicious prosecution in

Angola relating to his 2011 book *"Blood Diamonds: Corruption and Torture in Angola"*[58] (which Global Witness understands Sr. Marques has appealed). The Angolan judicial system is widely seen as compromised and the ruling has been strongly criticised by human rights groups. Such victimisation of civil society voices exposing natural resource related corruption, and the impunity with which state authorities mete out violence and abuse against citizens, are inimical to the purpose and spirit of the EITI.

"The spoils of power in Angola are shared by the few, while the many remain poor."
Rafael Marques de Morais

ANGOLA AND EITI

In 2014, Angola expressed interest in joining the EITI[59], however fundamental reforms are clearly needed before the country can be welcomed into the club. Beneficial ownership disclosure is essential to put an end to deals in which companies with hidden owners and no experience of oil exploration have been parachuted into multi-billion dollar oil deals. The Angolan government must also ensure journalists and civil society groups can contribute to the national debate on extractive activities without fear of reprisal. Civil society involvement is inherent to the workings of the EITI and must be protected by EITI states under the Civil Society Protocol[60]: if stakeholders countenance admission of countries that do not allow civil society to operate freely, the initiative's reputation will suffer irreparable damage.

Journalist and human rights activist Rafael Marques de Morais, accepting the 2015 Index on Censorship Freedom of Expression Award for Journalism.
CREDIT: Alex Brenner for Index on Censorship

CHAPTER 4 – Republic of Congo

How companies with obscure owners have been used to profit from Republic of Congo's oil wealth

Despite repeated scandals, secrecy continues to surround the beneficiaries of companies profiting from Republic of Congo's oil wealth. AOGC, a Congolese oil company Global Witness has exposed for involvement in "sham" oil trades and passing funds to companies controlled by members of the ruling elite, is now partnered with international oil companies on several oil fields. Congo has been EITI compliant since 2013[61], yet without disclosure of the beneficial owners of companies active in its oil sector, there is nothing to stop further abuses taking place.

"SHAM TRANSACTIONS"

In 2005, Global Witness reported how a Congolese company named Africa Oil & Gas Corporation ("AOGC") was profiting from under-priced oil cargoes sold by the national oil company, SNPC, and its subsidiary, Cotrade[62]. In a 2005 UK High Court judgment, Justice Cooke found that AOGC (and another company called Sphynx Bermuda) was owned and controlled by the then Director General of SNPC, Denis Gokana[63]. As SNPC and Cotrade were under Mr Gokana's effective control, he reasoned, no genuine commercial negotiations could have taken place with AOGC or Sphynx Bermuda for the sale of oil cargoes[64]. This was a blatant conflict of interest prohibited by SNPC's byelaws[65].

Justice Cooke found the trades were structured to disguise the fact the Congolese state was selling the oil: this was to avoid claims by funds which had bought up Congolese sovereign debt[66]. However, Global Witness believes AOGC and Sphynx Bermuda bought at least six cargoes from SNPC at beneath the official price, creating the opportunity for substantial profits on resale[67]. On the "Nordic Hawk" cargo which was the subject of the 2005 litigation, Mr Gokana accepted under cross-examination that he stood to make a profit of around $1.68m[68].

Global Witness subsequently exposed AOGC for paying hundreds of thousands of dollars to two Anguilla-based companies, Long Beach Ltd and Elenga Investments Ltd ("EIL")[69]. These were owned on trust for the President's son, Denis Christel Sassou Nguesso, and Blaise Elenga, former head lawyer at SNPC. Those companies paid off their owners' credit card bills, in Mr Sassou Nguesso's case funding extravagant shopping in Paris, Monaco, Marbella and elsewhere[70]. In a response dated October 2015, Mr Gokana informed Global Witness that any payments to these companies would have related to technical services agreements in place in 2003-2004 between AOGC and Long Beach and EIL, and denied they constituted an abuse of power or corruption. Yet the existence of these agreements raises questions as to whether further payments may have been made[71].

Overall, it appears AOGC was profiting from favoured treatment by SNPC and Congo's ruling elite was cashing in. In his response to Global Witness, Denis Gokana notes that from 2005 pricing of cargoes was determined by Cotrade without involvement of SNPC managers, so there could be no conflict of interest on sales to AOGC. As Cotrade was then headed by Denis Christel Sassou Nguesso,[72] this raises further questions around the timing of any payments made by AOGC to Long Beach.

THE RISE AND RISE OF AOGC

Despite these scandals, AOGC has risen to become Congo's premier local oil company, with interests in exploration, distribution and marketing and over 200 employees[73]. It stands to benefit from new local content laws entitling Congolese companies to 15-25% of each new or renewed permit[74] and has already won several valuable stakes in Congolese oil fields alongside major oil companies, such as:

- 13% of the Marine XI block controversially won by Soco International in 2005[75].
- 8-10% of the Mwafi, Foukanda, Kitina and Djambala licences renewed by Eni in 2014[76].
- 10% of the "Southern Sector" licences renewed by Total and Eni in 2015[77].

A further 15% of the "Southern Sector" licences was shared between two new companies, Kontinent Congo and Petro-Congo, whose owners Global Witness has so far been unable to trace. At current prices, Global Witness estimates AOGC's interest in the Southern Sector licences alone could be worth $520m[78].

There is still no clarity, however, around who ultimately benefits from AOGC's considerable portfolio. Mr Gokana divested his shares in AOGC in 2005,[79] but uncertainty surrounds even the current shareholders. In July 2015, Eni told Italian Magazine *Espresso* that no AOGC shareholders were public officials, only to admit this was incorrect three weeks later[80]. Given AOGC's high level political connections and history of payments to companies owned by members of the ruling elite, Global Witness believes these partnerships should be a serious concern to investors in Soco, Eni and Total[81].

Nevertheless, AOGC, Kontinent Congo and Petro-Congo are being propelled into oil deals by Congolese authorities, designated by officials without any apparent competitive auction process[82]. Increasing local participation in the Congolese oil industry is a worthy ambition, but unless there is transparency as to who owns and selects local partners, incumbent powerbrokers will have free reign to choose who profits from Congo's oil wealth[83].

SECRET PARTNERS CONFIRM NEED FOR REFORM

Alarmingly, mystery also surrounds the partners of the state oil company, SNPC. Congo's 2013 EITI report failed to mention three joint ventures between SNPC and the Queensway Group,[84] whose founder, Sam Pa, was placed under US sanctions in 2014 for his dealings in Zimbabwe and was reportedly detained by Chinese authorities on 8 October 2015[85]. These companies were reportedly set up to sell Congolese oil in Asia,[86] and their directors include Denis Gokana, Denis Christel Sassou Nguesso and Blaise Elenga[87]. Establishing how much Congolese oil has been sold through these companies should be a priority for the EITI in Congo.

Global Witness believes the lack of transparency around company ownership has facilitated the systematic abuse of authority in Congo's oil sector. Under the status quo, Congo's plentiful oil wealth continues to elude the country's population, of whom more than 60% live in poverty[88]. Without disclosure of all the beneficial owners of companies producing and bidding for Congo's oil, EITI will continue to give veneer of respectability to a sector in which rampant corruption is an open secret.

88 Queensway, Hong Kong.

CONCLUSION

EITI has enabled countries to make great strides forward towards more open, transparent and accountable management of oil, gas and mining resources. Yet the four scandalous cases in this report expose the limitations of the initiative's current disclosure requirements. The system of reconciling company payments with government receipts was designed to prevent money ending up in the hands of corrupt public officials or cronies of the ruling elites.[i] However, where payments were once diverted to accounts controlled by such individuals, oil and mining interests may now be diverted to companies under their secret control. The methods may be different, the outcome is not.

Beneficial ownership transparency is critical to resource rich countries: unless citizens know the identities of the real individuals behind oil, gas and mining companies, it is all too easy for corrupt officials and middlemen to siphon off revenue which should be for public benefit. Four billion dollars could transform the lives of the citizens in Nigeria, the DRC, Angola and Republic of Congo. Furthermore, the $4bn identified in these four specific cases is only the tip of the iceberg.

Ultimately, full ownership transparency will only be achieved via public registers of the beneficial owners of companies, trusts and similar structures in all jurisdictions, which is why actions taken so far by the EU, UK, and other countries to increase transparency are welcome. While beneficial ownership disclosure must become a condition of deal making in resource rich nations, wealthy countries and their offshore financial centres also bear responsibility for a system that is facilitating grand scale corruption and theft. Anonymous companies based in places such as the British Virgin Islands, Gibraltar and even the US and UK are too often used by the criminal and corrupt to exploit gaps in regulation. European and North American governments, multinational oil and mining companies and the professional services industry must cooperate more closely to shut these loopholes.

"I have never heard a legitimate case for the business, economic, or social function of anonymous companies. So, for me, the case is closed.

Mo Ibrahim, writing in the Guardian newspaper on behalf of "the B-Team": "Are anonymous companies a 'getaway vehicle for corruption'?"[89]

By including beneficial ownership transparency as a condition of membership, the EITI could play a critical role in engendering a more open and transparent future. Doing so would help establish more progressive norms of behaviour in the resource-rich countries that suffer so much from the current secrecy and obfuscation. Rather than reneging on its commitment to introduce beneficial ownership transparency by January 2016, the EITI should learn the lessons from the pilot and ensure effective implementation of this important transparency tool for citizens to know who is extracting their natural resources. This means making beneficial ownership transparency a requirement on all implementing countries. A mere encouragement which permits companies to participate in EITI without disclosing their owners will facilitate state looting under the guise of greater transparency.

i Global Witness believes the payment reporting system must be tightened by requiring disclosure of payments separately for each project, indicating the type of payment and to whom it was made. Without this level of disaggregation suspicious payments will remain undetectable within larger totals and the risk of corruption is increased.

Global Witness makes the following recommendations, ahead of the forthcoming meetings of the International Board and the EITI Global Conference in Lima in February 2016:

- **The EITI International Board must require disclosure of beneficial ownership information as part of the EITI Standard from January 2016.** Companies should have to disclose this information as part of the EITI reporting process in all EITI countries.

- **The EITI Secretariat should convene a technical working group involving all stakeholders to develop detailed guidance on the new beneficial ownership disclosure obligation.** This group should also consider how to apply the new beneficial ownership obligations to other companies in the natural resource value chain[90].

- **EITI companies should publicly commit to participation in beneficial ownership disclosure requirements as part of their participation in EITI.** No company should be entitled to Supporting Company status unless willing to do this.

The reporting requirement must:

- **Require disclosure of the *beneficial* owners of companies,** not simply a company's legal shareholders, which could be another company whose owners are hidden.

- **Include all direct or indirect owners or controllers of the company,** applying a low threshold of ownership interest, or no threshold at all.

- **Require disclosure of all interests held by Politically Exposed Persons (PEPs), regardless of size of holdings.** A politically exposed person is a person who holds a prominent public function or is connected to such a person, as defined by the Financial Action Task Force[91].

- **Apply to all oil, gas and mining companies that bid for, operate or invest in extractive assets.** Companies is listed on stock exchanges, should provide a link to existing disclosure portals.

- **Apply to all companies which are part of a joint venture to exploit oil, gas or mineral assets.** This must include any joint venture partners of state owned companies.

- **Require that the information provided by companies is verified as accurate by a senior official within the company.**

- **Recommend that data is reported in a machine readable and open data format.** This will maximise the utility of the data and pave the way public registers of beneficial ownership.

The beneficial ownership pilots demonstrated the ambition of many EITI countries to address beneficial ownership disclosure. However, it also showed that simply encouraging companies to disclose their true owners did not work. Global Witness's analysis indicated that the main barriers were a lack of clarity in the information provided to companies on what they should disclose, and a refusal of companies to provide this information.

Ultimately the success of any beneficial ownership disclosure requirement in EITI will depend upon support and enforcement by stakeholders. Governments, investors and civil society groups should actively promote disclosure, and the International Board should insist on it being a full requirement of the Standard. Inadequate beneficial ownership disclosure should result in an EITI country failing validation. There is no reason why a company should be awarded natural resource rights without publicly disclosing who its real owners are. Companies who are unprepared for transparency should have no claim to the reputational benefits of association with EITI, nor should they benefit from resources that ultimately belong to a country's citizens.

For further information see:

https://www.globalwitness.org/reports/eiti-and-global-witness/
http://www.resourcegovernance.org/publications/owning-options-disclosing-identities-beneficial-owners-extractive-companies
https://www.globalwitness.org/reports/shell-starts-crack/
https://www.globalwitness.org/archive/azerbaijan-anonymous/
https://www.globalwitness.org/reports/rigged/

ENDNOTES

1. EITI Standard 2013, provision 3.11, page 24: https://eiti.org/files/English_EITI_STANDARD.pdf

2. In the Democratic Republic of Congo's 2014 EITI report, 31% of private companies disclosed beneficial ownership information. This was later improved upon in their 2013 report, published in July 2015.

3. Global Witness, *"Analysis of EIT Beneficial Ownership Pilots"*; March 2013

4. See for example, Global Witness, *"The shell starts to crack"*; October 2014 (https://www.globalwitness.org/reports/shell-starts-crack/). Global Witness secured complete beneficial ownership information for 17 of Myanmar's 36 oil fields then under licence, simply by requesting it.

5. EITI, *"A call for concrete action on beneficial ownership – EITI shows the way"*; 14 November 2014: https://eiti.org/news/call-concrete-action-beneficial-ownership-eiti-shows-way

6. A full list of EITI Board members is available on the EITI website: https://eiti.org/about/board

7. For full description of the EITI , see the guide prepared by the Natural Resource Governance Institute: http://www.resourcegovernance.org/eitiguide/

8. EITI website: https://eiti.org/countries (accessed 1 October 2015)

9. A list of EITI supporting companies is maintained on the EITI website: https://eiti.org/supporters/companies

10. Civil Society Protocol of EITI Standard: https://eiti.org/files/EITI_CivilSocietyProtocol_Jan2015.pdf

11. EITI Standard 2013, Article 3.11 (https://eiti.org/document/standard). Companies whose shares are listed on stock exchanges are exempt from the disclosure requirement as information on shareholders will already be publicly available elsewhere.

12. A description of the pilot project is on the EITI website: https://eiti.org/pilot-project-beneficial-ownership

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15. Global Witness correspondence with Eni and Shell.

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24. NEITI, *"Final Core EITI Financial Flows Reconciliation 2009-2011 Oil and Gas Audit Report"*, pages 257, 266; 2012: http://neiti.org.ng/index.php?q=documents/audit-report-2009-2011

25. A full list of publications and associated material relating to Global Witness investigations of secret sales in the Democratic Republic of Congo is available on the Global Witness website: https://www.globalwitness.org/campaigns/oil-gas-and-mining/congo-secret-sales/

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27. EITI website: https://eiti.org/supporters/companies/fleurette-properties-limited (accessed 13 October 2015)

28. For a full description of the Kansuki deal, see Global Witness, *"Memo to Glencore shareholders: Secrecy surrounding Glencore's business deals in the Democratic Republic of Congo risks exposing shareholders to corrupt practices"*; 9 May 2012: https://www.globalwitness.org/archive/secret-sales-publications/

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63. Approved judgment of the honourable Mr Justice Cooke in *Kensington International Limited v Republic of Congo & others*, [2005] WEHC 2684 (Comm), paragraphs 8, 12, 125, 171, 146 & 198 (henceforth known as *"the Nordic Hawk Judgment"*): http://image.guardian.co.uk/sys-files/Guardian/documents/2005/12/15/KensingtonJudgmentAppro.pdf Justice Cooke found Denis Gokana had sole control over the AOGC and Sphynx bank accounts and trading activities. On Denis Gokana's own evidence he was the owner the Sphynx companies and of 90% of the shares of AOGC. Mr Gokana remains special adviser on oil to the President of Republic of Congo, Denis Sassou Nguesso.

64. *Nordic Hawk judgment*, paragraphs 62, 132-143, 169 & 197.

65. « *Statuts de la Société Nactionale des Pétroles du Congo* », Article 11.

66. *Nordic Hawk judgment*, paragraphs 146 & 199.

67. Global Witness, *"The Riddle of the Sphynx"*, page 12 and testimony of Denis Gokana to the UK High Court on 25 October 2005. Global Witness calculates that the six cargoes were sold to Sphynx Bermuda at an average discount to the "prix fiscal" of 9%. Denis Gokana disputes the basis of our calculations and informed us that AOGC made a loss on certain cargoes.

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