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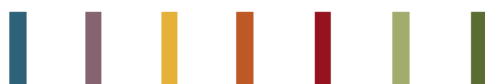
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ABOUT THE AFRICA PROGRESS PANEL

The Africa Progress Panel (APP) consists of ten distinguished individuals from the private and public sector who advocate for shared responsibility between African leaders and their international partners to promote equitable and sustainable development for Africa. Mr Kofi Annan, former Secretary-General of the United Nations and Nobel laureate, chairs the APP and is closely involved in its day-to-day work.

The life experiences of Panel members give them a formidable capability to access a wide cross-section of society including at the highest levels in Africa and across the globe. As a result, the Panel functions in a unique policy space with the ability to target decision-making audiences, including African and other world leaders, heads of state, leaders of industry, plus a broad range of stakeholders at the global, regional, and national levels.

The Panel facilitates coalition building at the highest levels to leverage and to broker knowledge, break bottlenecks, and convene decision-makers to influence policy and create change for Africa. The Panel has exceptional networks of policy analysts including academics and policy practitioners across Africa. By bringing together experts with a focus on Africa, the APP contributes to evidence-based policies.



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ABOUT THE AFRICA PROGRESS REPORT

Published every year, the Africa Progress Report is the Africa Progress Panel's flagship publication. The report draws on the best research and analysis available on Africa and compiles it in a refreshing and provocative manner. Through the report, the Panel recommends a series of policy choices and actions for African policy makers who have primary responsibility for Africa's progress, as well as international partners and civil society organizations.

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1. MANAGING STATE COMPANIES AND CONCESSIONS

The diversion of revenues and other losses associated with commercial malpractice are endemic across resource-rich countries. It is impossible to place a figure on the scale of the revenue losses, for good reason: the practices involved are illegal or in the grey area between legality and criminality. What is clear is that the sums involved are often very large in relation to national budgets. Weak national governance creates an enabling environment for graft. But the opaque practices of some foreign companies and the extensive use of offshore companies actively facilitate and support the illicit diversion of public wealth into private bank accounts.

Poorly managed state-owned companies are part of the problem in many countries. Through their control over concessions, involvement in production-sharing agreements, and role as a conduit for foreign investment, export earnings and domestic market activities, state-owned companies occupy a pivotal position in natural resource governance. Their management of revenues, the value that they place on the assets under their control, and the prices they receive for concessions, are not just commercial transactions. They also affect the revenues that governments receive – and hence governments' capacity to invest resource wealth in health, education and economic infrastructure.

All too often the operations of state companies are hidden behind opaque financial management systems, with limited legislative oversight, restricted auditing procedures and, in the worst cases, a comprehensive disregard for transparency and accountability. The terms of production-sharing agreements, reporting on "signature bonuses" for contracts, and concession trading are seldom disclosed. With this lack of transparency comes another endemic concern: the potential for political leaders and public officials to benefit from secret deals made with foreign investors.

One of the starkest examples comes from Angola. In 2011 the IMF identified "financing residuals", essentially missing money, in the accounts of Sonangol, the state energy company, amounting to US\$31.4 billion over the period 2007–2010.⁹³ Most of the deficit was explained through retrospective accounting. In March 2012, however, US\$4.2 billion was still unaccounted for.⁹⁴ To put this figure in context, it exceeded the 2012

national budget and was double the estimated annual expenditure required for Angola to put in place a basic infrastructure platform covering roads, ports, power and water and sanitation.⁹⁵ The interaction between the Angolan state oil company and intermediaries raises wider concern. Much of the oil exported from Angola to China passes through a syndicate called the China International Fund: the terms on which oil is purchased from the state oil company and sold to China are not made public.⁹⁶

Weak governance of some state-owned petroleum and mining companies fuels revenue losses through a range of channels. In some cases, corruption, inefficiency and lack of capacity all contribute. Verifying the claims and counter-claims made in individual cases is beyond the scope of this report, but the credible allegations made by financial authorities, the IMF, the World Bank and international transparency campaigners in several countries indicate the scale of the losses involved:

- **Nigeria:** Numerous examples of shortcomings in the revenue administration of the Nigerian National Petroleum Corporation have been identified. In a recent report, one parliamentary task force concluded that around US\$6.8 billion had been lost between 2010 and 2012 as a result of corruption and mismanagement involving transfers of fuel subsidies.⁹⁷ Another investigative body, the Petroleum Revenue Special Task Force, identified losses of US\$29 billion resulting from a natural gas pricing, along with missing payments connected to concessions and production-sharing arrangements.⁹⁸
- **Equatorial Guinea:** The state oil company, GEPetrol, is one of the most opaque energy companies. Ongoing legal challenges in France, Spain and the United States, as well as a complaint before the African Commission on Human and Peoples' Rights, allege misuse of Equatorial Guinea's oil funds, including transfers to overseas bank accounts.⁹⁹

Lost revenues in the Democratic Republic of the Congo

No country better illustrates the high costs associated with opaque concession trading than the Democratic Republic of the Congo (DRC). Privatization of the DRC's minerals sector has been plagued by a culture of secrecy, informal deals and allegations of corruption.

The government has responded to concerns over the manner in which mining concessions have been sold off. Towards the end of 2010, it agreed to publish all

mining and oil contracts.¹⁰⁰ In 2011, it signed a decree requiring that contracts for any cession, sale or rental of the state's natural resources be made public within 60 days of their execution.¹⁰¹ However, in 2012, the IMF stopped a loan programme after the government failed to publish full details of a mining deal involving the sale by the state-owned mining company, Gécamines, of a stake in a major copper concession. The recipient was a company registered in the British Virgin Islands.¹⁰² Following the IMF's decision to halt three tranches of loans totalling about US\$225 million, the AfDB announced that it was withholding a planned US\$87 million in budget support.¹⁰³ The World Bank had briefly suspended loans in 2010 because of related concerns over concession arrangements.¹⁰⁴

With some of the world's richest mineral resources, the DRC appears to be losing out because state companies are systematically undervaluing assets. Concessions have been sold on terms that appear to generate large profits for foreign investors, most of them registered in offshore centres, with commensurate losses for public finance.

In preparing this report we examined in some detail several concession deals in the DRC. In each case, we looked at the terms of sales by Gécamines and other state companies. Our research did not consider allegations of corruption in specific cases, or on the part of individuals. We focused instead on the potential undervaluation of mineral assets by comparing the price received by Gécamines for concession sales with commercial market valuations of the concession. For the commercial valuation we used either the price received by the concession holder in an onward sale, or an independent market valuation of the worth of the assets.

In the interests of comparability, we restricted our analysis to the recent past (2010–2012) and to deals for which robust data are available. We narrowed our sample down to five deals (see Annex 1). In each case the trading arrangement involved a state company and one or more offshore companies, most of which were registered in the British Virgin Islands and connected to one of the largest private investors in the DRC, the Fleurette Group.

The results of our exercise raise fundamental questions about the practices surrounding the DRC's mineral resource governance:

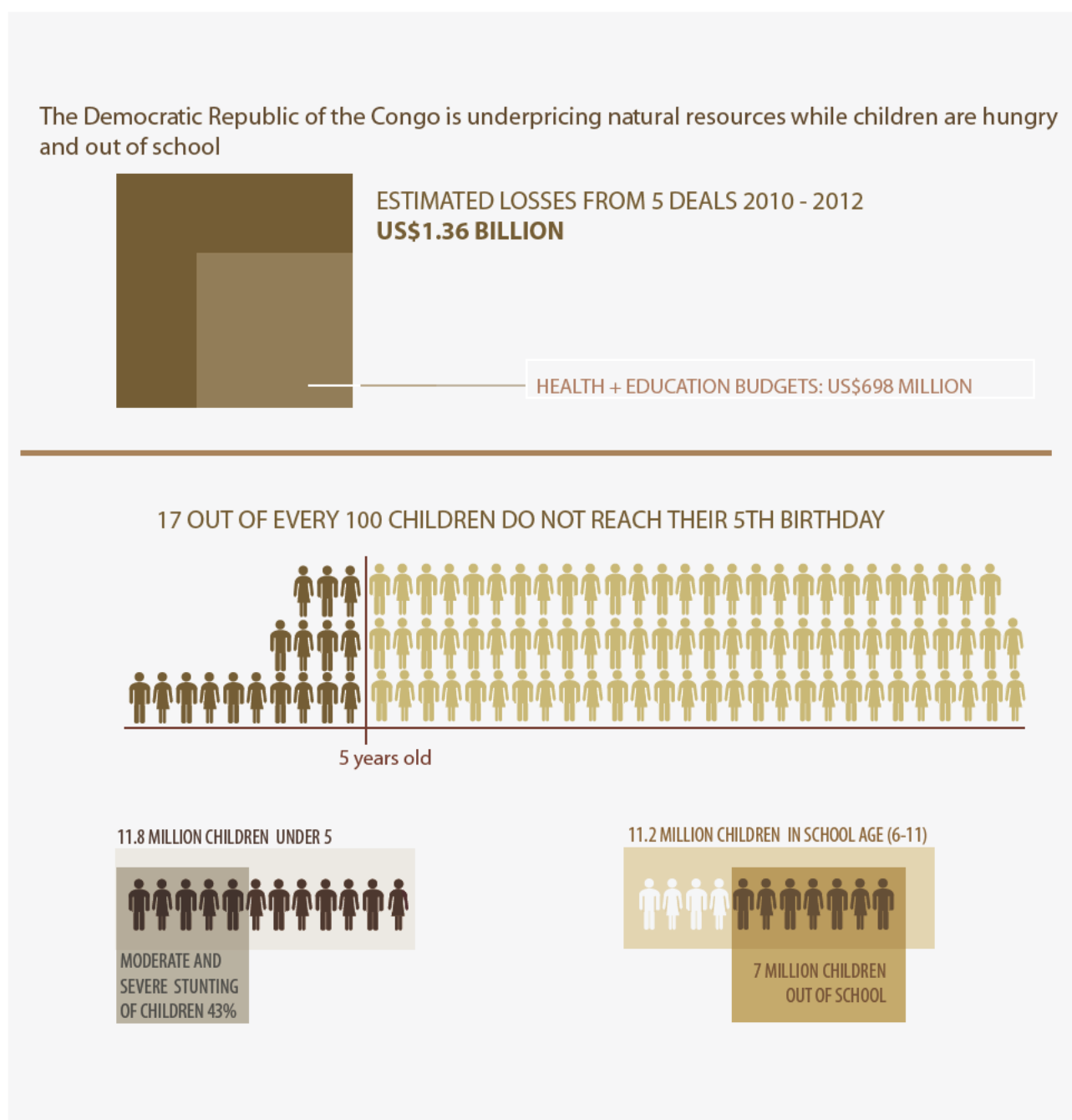
- Between 2010 and 2012, the DRC lost at least US\$1.36 billion in revenues from the underpricing of mining assets that were sold to offshore companies.
- Total losses from the five deals reviewed were equivalent to almost double the combined annual budget for health and education in 2012.¹⁰⁵ This is in a country that ranks lowest on the UN's Human Development Index, with some of the world's worst malnutrition, its sixth highest child mortality rate, and over 7 million children out of school (Figure 20).
- Each citizen of the DRC lost the equivalent of US\$21 from the underpricing of concession assets –7 per cent of average income. The DRC has a population of 67 million.
- Across the five deals, assets were sold on average at one-sixth of their estimated commercial market value. Assets valued in total at US\$1.63 billion were sold to offshore companies for US\$275 million. The beneficial ownership structure of the companies concerned is unknown.
- Offshore companies were able to secure very high profits from the onward sale of concession rights. The average rate of return across the five deals examined was 512 per cent, rising to 980 per cent in one deal.

It should be emphasized that our exercise captures what is likely to be a small share of the overall losses caused by underpricing. We cover only a small subset of deals for the period 2010–2012. Moreover, the pattern of selling mining assets to offshore shell companies has been a consistent theme in the privatization of state assets over more than a decade. We do not infer from our analysis any illegality on the part of political leaders, public officials or the companies involved in purchasing and selling the concessions. However, the potential scale of the overall losses merits further investigation in order to clarify the circumstances surrounding the transactions, and to determine whether or not the assets in question were knowingly undervalued. Our findings are consistent with earlier investigations. One legislative committee estimated that in 2008 the government lost as much as US\$450 million through a mix of poor management, corruption and flawed taxation policies.¹⁰⁶

Senior figures in the DRC government recognize the gravity of the problem posed by opaque concession trading. As the prime minister put it in 2012: "We must avoid situations where mining contracts are not published ... where sales of mining assets are undervalued and the government is not informed of what state mining companies are doing."¹⁰⁷ Our survey underlines the importance of this objective.

Unravelling the deals involved in concession trading in the DRC is enormously difficult. The complex structures of interlocking offshore companies, commercial

Figure 20: DEMOCRATIC REPUBLIC OF THE CONGO LOSSES IN CONCESSION TRADING VERSUS BUDGETS FOR HEALTH AND EDUCATION



secrecy on the part of major mining companies, and limited reporting by state companies and government agencies to the DRC's legislators, creates what amounts to a secret world – a world in which vast fortunes appear to be accumulated at the expense of the DRC's people. However, the issues at stake

are so fundamental to the challenge of harnessing resource wealth for human development that we look behind the curtain to reconstruct the circumstances surrounding four of the five deals covered in our analysis (Box 9).

BOX 9: Concession dealing in the Democratic Republic of the Congo – some unanswered questions

The concession sale that prompted the IMF's decision to halt loans to the DRC was not an isolated event. It followed a series of complex deals involving the state-owned mining company, Gécamines, offshore companies and major transnational corporations, including Glencore and the Eurasian Natural Resources Corporation (ENRC). Both Glencore and ENRC are listed on the London Stock Exchange. The two companies strenuously deny charges of impropriety and both have adopted policy guidelines on corruption, bribery and due diligence. Between early 2010 and the end of 2012, the DRC sold off stakes in at least seven¹⁰⁸ prized mining projects to offshore companies. Four deals are summarized below – fuller details are provided in Annex 1. The sales were highly opaque and secretive, with details usually emerging only months later.¹⁰⁹ The ultimate beneficiaries of the offshore companies involved in the deals are unknown.

- The Société Minière de Kabolela et de Kipese (SMKK):** SMKK owns a copper and cobalt deposit in Katanga province. In 2009, Gécamines and Eurasian Natural Resources Corporation (ENRC) each owned 50 per cent of SMKK under a joint venture agreement. The agreement gave ENRC the right to first refusal on any future sale of Gécamines' stake.¹¹⁰ ENRC waived that right, instead purchasing in December 2009 an "option to buy" the shares from Emerald Star – an offshore company registered in the British Virgin Islands. The purchase price for this option was US\$25 million.¹¹¹ At the time, Emerald Star was not a registered owner of shares in SMKK. It was not until February 2010 that Gécamines actually agreed to sell its shares in SMKK to Emerald Star. The shares were purchased for US\$15 million, according to documents published by the Ministry of Mines.¹¹² Four months later, ENRC exercised its "option to buy" and paid Emerald Star US\$50 million for the shares in SMKK (in addition to the initial US\$25 million).¹¹³ **The total payment to Emerald Star amounted to US\$75 million for shares it purchased at a price of US\$15 million – a 400 per cent profit over a four-month period, with a commensurate implied loss of public revenues.**¹¹⁴
- The Kolwezi project:** In January 2010, Gécamines revoked a contract with the mining company First Quantum for a joint venture in the Kolwezi copper project.¹¹⁵ It subsequently awarded 70 per cent control of the Kolwezi licence to the Highwind Group – a collection of four offshore companies registered in the British Virgin Islands. The contract stipulated that Highwind would pay US\$60 million for the assets as a signature bonus.¹¹⁶ ENRC secured a stake in the project when it bought 50.5 per cent of Camrose, the parent company of the Highwind Group, for US\$175 million.¹¹⁷ It purchased the remainder of Camrose (which was also registered in the British Virgin Islands) for US\$550 million in a deal approved by shareholders on 24 December 2012.¹¹⁸ Taking into consideration other assets wrapped up in the Camrose purchase, ENRC effectively paid \$685.75 million for Kolwezi and associated concessions, which were originally purchased by the Highwind Group and its affiliates for \$63.5 million – a return of just under 1,000 per cent for the offshore companies concerned (Annex 2).
- The Mutanda mine:** Mutanda is one of the DRC's main copper and cobalt mines, producing 87,000 tonnes of copper and 8,500 tonnes of cobalt in 2012.¹¹⁹ It operates as a joint venture between a Panama-registered company called SAMREF Congo SPRL, which controls 80 per cent, and Gécamines. Glencore acquired a stake in SAMREF in 2007.¹²⁰ In March 2011, SAMREF (then half-owned by Glencore) waived its right of first refusal on the purchase of Gécamines' separate 20 per cent stake in the Mutanda project.¹²¹ Instead, Gécamines sold this stake to a British Virgin Islands-listed company, Rowny Assets, for US\$120 million. **The average of five commercial valuations at the time of the sale put the value of a 20 per cent share in Mutanda at US\$634 million, implying a 428 per cent profit for Rowny Assets – revenue that could have benefited the Congolese state instead.**
- The Kansuki mine:** In 2010 the Kansuki mining concession was 75 per cent owned by a company called Kansuki Investments SPRL and 25 per cent owned by Gécamines.¹²² Kansuki Investments was owned by the Bermuda-registered Kansuki Holdings – itself belonging half to Glencore and half to a Gibraltar-registered holding company called Fleurette.¹²³ In March 2011, Kansuki Investments waived its right of first refusal on Gécamines' 25 per cent stake, allowing Gécamines to sell its shares to the British Virgin Islands-registered Biko Invest Corp,¹²⁴ which is owned in turn by the Fleurette Group.¹²⁵ The Fleurette Group has not disclosed the full list of beneficial owners of its subsidiaries in the DRC. **The sale price for the Gécamines shares was US\$17 million. Taking an average of two independent valuations, one by Deutsche Bank and the other by Liberum Capital, the asset value was US\$133 million, suggesting an undervaluation of 682 per cent (Annex 2).**

ANNEX 1

Estimated losses to the Democratic Republic of the Congo on five concession deals between 2010 and 2012

Over the past decade, the Democratic Republic of the Congo (DRC) has privatized a wide range of assets previously held by state-owned companies. Estimating the profit or loss on the sale of mineral concessions and licences is inherently difficult. Information on the potential market value of the resources is often lacking because of commercial secrecy and inadequate geological information. The complex “bundling” of assets presents another layer of difficulty.

In investigating concession sales, we adopted strict criteria to determine which deals to analyse. Selection was made contingent on timing (only deals agreed after 2010 were included), and the availability of either an onward sale price for the concession (to indicate the gap between the payment received by the government and the payment subsequently received by the concession holder) or the availability of independent market valuations. Applying these criteria, we identified five major concession deals between 2010 and 2012.

Under these deals, the DRC sold copper and cobalt assets to offshore companies linked to an offshore-registered holding company called Fleurette. No details are available of the beneficial ownership structure of the companies concerned. Glencore and the Eurasian Natural Resources Corporation (ENRC) subsequently purchased assets acquired by offshore concession holders – both are FTSE100 companies listed on the London Stock Exchange. Our assessment focuses solely on the economics of the concession sales. It does not consider the legality or the legitimacy of the deals in question. Where assets secured by offshore companies were resold at a publicly declared price, the profit secured is calculated as the difference between the onward sale price and the price paid by the same company to secure the initial concession. In two of the five cases – Kansuki and Mutanda – there was no onward sale. In the absence of this benchmark, we use evidence from independent commercial market valuations. Specifically, we estimate the imputed loss as the average of commercial valuations of the asset minus the price at which the offshore firm bought the asset.

It should be emphasized that the total losses estimated for the five deals is almost certainly an underestimate of the real level of losses. Several major deals have not been taken into account, either due to a lack of data or because the original sale of the concession to offshore companies occurred before 2010. Other post-2010 deals involving concessions in oil and gold have not been included because data was considered inadequate. These include the allocation in May 2010 of exploration licences for two blocks in Lake Albert (northeastern DRC) sold to offshore companies registered in the British Virgin Islands. Our calculations do not include losses associated with tax and royalty payments foregone as a result of the seizure and transfer of assets from established mining companies. These losses may be of a considerable order of magnitude.

Despite these omissions, our assessment points to considerable losses to the state and state mining entities. Taking the five deals together, we estimate the losses from the five deals at US\$1.36 billion. Assets were sold on average at one sixth of their commercial market value. Expressed differently, offshore trading companies were able to secure a return of US\$1.63 billion on assets purchased for US\$275.5 million – an average margin of 512 per cent.

Table A: FIVE MAJOR CONCESSION DEALS IN THE DEMOCRATIC REPUBLIC OF THE CONGO (2010-2012)

THE CONCESSION DEALS AND ASSETS TRADED	BACKGROUND	PRICE PAID TO THE STATE/ STATE MINING COMPANIES (US\$)	DATE OF ONWARD SALE	PRICE PAID BY FINAL BUYER, OR ESTIMATED COMMERCIAL VALUE (US\$)	ESTIMATED LOSS TO THE DRC/ STATE MINING COMPANIES (US\$)
<p>Sale of 70% of Kolwezi and the entirety of Comide (copper mines) by the state mining company Gécamines¹</p> <p>Comide: The first 80% of Comide (later adjusted to 75%) was sold between 2002 and 2006.² Available evidence suggests that a signature bonus of \$3.5 million was paid.³ The remaining 25% was transferred to the British Virgin Islands-registered company Straker in June 2011 at no cost to Straker.⁴</p>	<p>Kolwezi: Gécamines sold the Kolwezi mining licence to the Highwind Group (comprising four companies registered in the British Virgin Islands) in January 2010⁵ in exchange for a \$60 million signature bonus.⁶ The bonus was paid for by ENRC under an August 2010 deal.⁷</p>	<p>\$43.5 million</p> <p>(\$60 million for the Kolwezi signature bonus and \$3.5 million as the signature bonus for Comide)</p>	<p>Staged in two phases: 20 August 2010 and 23 December 2012.</p>	<p>\$485.75 million</p> <p>ENRC bought Camrose – the parent company of the Highwind Group – and Straker. The total cash paid comprises the 70% share of the Kolwezi licence and 100% of the Comide licence.⁸</p> <p>(ENRC also provided a \$400 million loan and a \$155 million loan guarantee.)⁹</p>	<p>\$622.25 million</p>
<p>Sale of Gécamines' 50% share of SMKK to Emerald Star</p> <p>Emerald Star is a company registered in the British Virgin Islands¹⁰</p>	<p>SMKK: Gécamines share was sold on 1 February 2010</p>	<p>\$15 million¹¹</p>	<p>June 2010 from Emerald Star to ENRC¹²</p>	<p>\$75 million¹³</p>	<p>\$60 million</p>
<p>Sale of the entirety of the Sodifor joint venture (comprising the Frontier and Lonshi copper mines), by the state mining company Sodimico. The sale was followed by an acquisition and resale of the Frontier licence by the DRC government</p> <p>First 70 per cent of Sodifor sold to Fortune Ahead Ltd (registered in Hong Kong). Remaining 30 per cent sold to Sandro Resources Ltd and Garetto Holdings Ltd (both registered in the British Virgin Islands)</p>	<p>Sodifor: Sodimico sold the first 70% of Sodifor on 20 June 2010 for \$30 million.</p> <p>Remaining 30% sold on 28 March 2011 for an additional \$30 million.¹⁴</p>	<p>\$60 million</p> <p>Total paid by the offshore companies for Sodifor (\$30 million for the first 70% and \$30 million in the second 30%) in 2010-11.</p> <p>In 2012 the Frontier mining licence alone was sold back to the government for \$80 million.¹⁵</p>	<p>After buying back the Frontier licence from Sodifor the government then sold it on to ENRC in a deal announced 31 July 2012.</p>	<p>\$103 million (Frontier and Lonshi combined)¹⁶</p> <p>The state lost at least \$20 million through the sale of Sodifor to offshore companies.¹⁷</p> <p>An extra \$23 million imputed loss for Lonshi is included derived from average commercial valuations.¹⁸</p>	<p>\$43 million</p>
<p>Sale of Gécamines' 25% residual stake in Kansuki to Biko Invest Corp (registered in the British Virgin Islands)</p>	<p>28 March 2011¹⁹</p>	<p>\$17 million²⁰</p>	<p>Not sold on</p>	<p>\$133 million</p> <p>Based on average of commercial valuations.²¹</p>	<p>\$116 million</p>
<p>Gécamines' residual 20% stake in Mutanda to Rowny Assets Ltd (registered in the British Virgin Islands)</p>	<p>28 March 2011²²</p>	<p>\$120 million²³</p>	<p>Not sold on</p>	<p>\$433.6 million</p> <p>Based on average of commercial valuations:²⁴</p>	<p>\$513.6 million</p>
TOTAL		\$275.5 million		\$1.63 billion	\$1.355 billion

1. It should be noted that, as part of this deal, ENRC also obtained from Camrose 63.7% of the Toronto-listed Africo Resources Limited, which owned "a 75% interest in the exploitation licence for the Kalukundi property in the Kolwezi District of Katanga Province" (ENRC press release "Acquisition of 50.5% of the Shares of Camrose Resources Limited," 20 August 2010, available at <http://www.enrc.com/sites/enrc.g3dbuild.com/files/presentations/CamroseAnn2.pdf>, last accessed 22 March 2013.). However, the Africo deal has been excluded from these calculations, given that Camrose had previously purchased the asset for \$100 million from a private party, rather than the state or any state-owned enterprise. It is also worth noting that the \$100 million that Camrose paid for its Africo stake was funded with a loan from a separate company, and that this loan was then repaid from an additional \$400 million loan that was part of the 20 August 2010 deal – thus the original owners of Camrose ended up incurring no costs in their purchase of Africo.
2. Chapter 11 of Volume 2 of the November 2007 Rapport des travaux document emanating from the Commission de revision des contrats miniers states that under the original joint venture contract for Comide from February 2002, the DRC government had 39%, Gécamines had 20% and a company called the Congo Investment Corporation (or Cico) held the remaining 41% (Commission de Revision des Contrats Miniers, République Démocratique du Congo Ministère des Mines, Rapport des travaux, Vol. 2, Partenariats Conclues Par La Gécamines, 106-107, Nov. 2007, available at <http://www.congomines.org/wp-content/uploads/2011/10/CommissionRevision-2007-TOME2-Gecamines.pdf>, last accessed 21 March 2013). In the following years – it is not entirely clear when – the DRC government disappeared from the joint venture and Cico was replaced by the company Simplex, a company associated with Mr Gerler (Id. at 108). Simplex's share in the company was then reduced from 80% to 75%. A representative of Mr Dan Gerler has said that Simplex obtained the 80% stake in Comide in 2006. An explanation of Simplex's involvement in the Comide concession by Mr Gerler's representatives can be found on the Global Witness website: see "Additional responses by Dan Gerler to Global Witness", May 2012 (<http://www.globalwitness.org/sites/default/files/library/Additional%20responses%20by%20Dan%20Gerler%20to%20Global%20Witness.pdf>, last accessed 22 March 2013).
3. An official document from the DRC's renegotiation committee, published on the Carter Center website and dated 15 December 2008, states that a signature bonus of \$3.5 million was to be paid for Comide (<http://www.congomines.org/wp-content/uploads/2011/10/PV-Dec-2008-COMIDE.pdf>, last accessed 21 March 2013). The summary states: "Documents reprenant les principales modifications du contrat Congolaise des Mines et de Développement (COMIDE) suite à la revision et renégociation des contrats miniers. Ces documents visaient à préparer les éventuels avenants au contrat et ne constituent donc pas l'accord final entre les partenaires. L'avenant de la renégociation, conclu le 13.01.2009, n'est pas disponible." [Translation: Documents that state the main modifications to the Comide contract following the revision and renegotiations of mining contracts. These documents aimed to prepare eventual amendments to the contract and thus do not constitute the final agreement between the partners. The amendment resulting from the renegotiation, concluded 13/1/09, is not available.] In November 2012 the DRC mining and finance ministries published a statement outlining the history of the Comide concession but this gave no figures for the original sales price of the 75/80% of Comide; see <http://www.congomines.org/wp-content/uploads/2012/12/G3-Comide-2012-Clarification-Vente-dactif-Gecamines.pdf>, last accessed 22 March 2013). The sale of Comide has generated a great amount of controversy. The IMF ended a three-year loan programme with the final three tranches unpaid in December 2012, citing the DRC authorities' failure to publish contract details relating to the subsequent sale of Gécamines' 25% remaining stake in Comide as the reason for cutting off the loan.
4. The news of the cession of Gécamines' remaining 25% stake in Comide was reported by Bloomberg news agency in a piece of 28 May 2012: "Congo May Have Violated IMF Deal With Mining Asset Sale" (<http://www.bloomberg.com/news/2012-05-28/congo-may-have-violated-imf-deal-with-mining-asset-sale.html>, last accessed 22 March 2013). The minutes of the Comide board meeting of 29 June 2011, where the decision was taken to cede the 25% stake in the company to Straker, can be found on the Carter Center's Congo Mines website at <http://www.congomines.org/wp-content/uploads/2012/12/G3-Comide-2011-PV-Cession-Actifs-Gecamines-a-Straker.pdf>, last accessed 22 March 2013). The November 2012 mining and finance ministry statement, cited above, says in its point 16: "La cession des parts de Gécamines dans COMIDE Sprl n'a aucune implication financière." (The ceding of Gécamines' shares in Comide has no financial implication.). Gécamines reiterated in a 13 March 2013 statement that Straker made no payment for its 25% stake in Comide, saying "Les parts sociales auxquelles Gécamines a renoncé ont été cédées sans aucune contrepartie financière, à Straker International Corporation" [Translation: The shares which Gécamines renounced were ceded for no financial cost to Straker International Corporation] (http://www.gecamines.cd/news_13_03_13.php, last accessed 22 March 2013).
5. According to a court judgment in the British Virgin Islands (BVIHC (COM) 2010/0125, page 3) the Highwind Group signed its contract on the "same day" as Gécamines cancelled First Quantum's licence over Kolwezi. The date is given as 7 January 2010. The contract between Gécamines and the Highwind Group, dated January 2010, is available at http://mines-rdc.cd/fr/documents/contrat_gcm_highwind.pdf (last accessed 22 March 2013).
6. The \$60 million signature bonus ("Pas de Porte") is documented on page 21 of Highwind contract with Gécamines, available at http://mines-rdc.cd/fr/documents/contrat_gcm_highwind.pdf (last accessed 22 March 2013).
7. A 14 June 2010 preliminary agreement between ENRC and Camrose states that ENRC's promised \$400 million loan to Camrose included \$60 million to "satisfy the pas de porte payment [signature bonus] obligations of the Highwind Group". The leaked preliminary agreement is entitled "Letter of intent regarding the sale of shares in Camrose Resources Ltd". The breakdown of the \$400 million loan is given on page 5, where it is further stated that \$20 million of the loan is for payment of the capitalisation of the Metalkol joint venture (originally formed by the Highwind Group and Gécamines in January 2010). Thus all of the Highwind Group's acquisition costs were paid for by ENRC months after the transaction.
8. ENRC pledged \$175 million cash (excluding loans) in a deal on 20 August 2010 and a further \$550 million cash in a deal approved by shareholders on 23 December 2012, giving a total of \$725 million. The value of the Africo shares (US\$39.25 million, on the basis of Toronto Stock Exchange data from the day of the deal) has been excluded from our calculations, giving the total of \$685.75 million. It is worth noting that the average of commercial valuations for 70% of Kolwezi is \$1.53 billion, while there is no known commercial valuation of Comide.

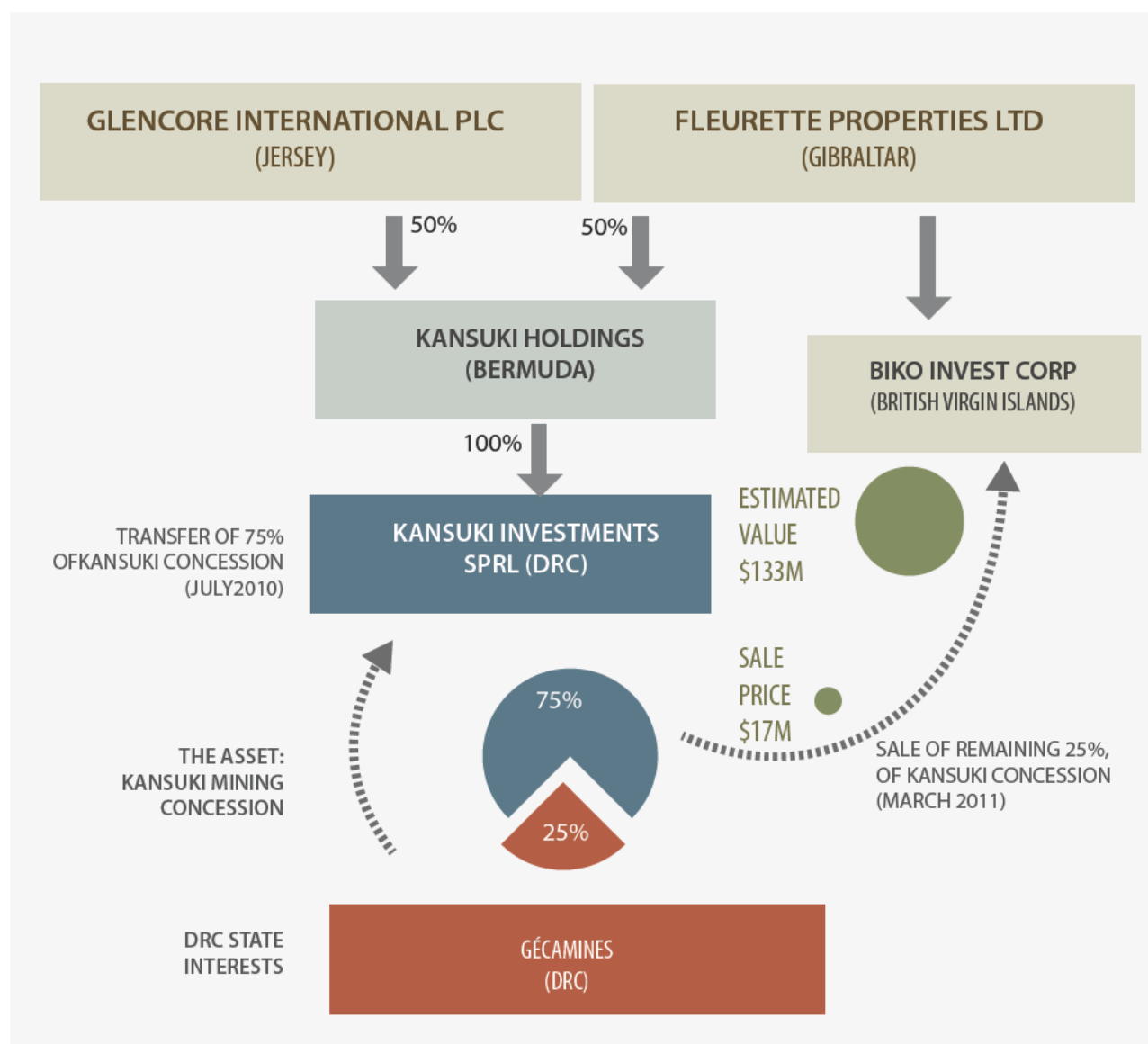
9. See ENRC press release "Acquisition of 50.5% of the Shares of Camrose Resources Limited," 20 August 2010, available at <http://www.enrc.com/sites/enrc.g3dbuild.com/files/presentations/CamroseAnn2.pdf>, last accessed 22 March 2013. Note that a portion of the \$400 million loan was intended to repay an earlier \$100 million loan Camrose had received from a third party for its earlier acquisition of Africo Resources.
10. See contract (contrat de cession des parts) between Gécamines and Emerald Star of 1 February 2010, published on the Ministry of Mines website (http://mines-rdc.cd/fr/documents/contrat_cession_parts_gcm_smkk_fev_2010.pdf, last accessed 22 March 2013). The sale price of \$15 million is specified in article 4.1.
11. *Id.*
12. ENRC's 2010 preliminary results, available at <http://www.enrc.com/system/files/press/23-03-11%20Announcement%20of%202010%20Preliminary%20Results.pdf>, last accessed 22 March 2013.
13. *Id.*
14. The contract covering the first 70% can be found on the DRC Ministry of Mines website at http://mines-rdc.cd/fr/documents/Contrat_convention_sodifor.pdf. The contract covering the sale price for the remaining 30% can also be found on the ministry's website, at http://mines-rdc.cd/fr/documents/accord_prix_achat_sodimico_sandro_garetto.pdf.
15. DRC Ministry of Budget document seen by Global Witness, listing payments by the state in 2012, month-by-month. Under transferts et autres interventions, Sodifor is specifically named as receiving 74.688 billion Congolese francs, which is equivalent to \$80 million. The payment appears to be reflected in a Banque Centrale du Congo report for the week of 7 December 2012: Condensé hebdomadaire d'informations statistiques, no. 49/2012. Page 25 lists a payment for August 2012 labelled as autres (http://www.bcc.cd/downloads/pub/condinfostat/cond_n_49_7dec2012.pdf, last accessed 22 March 2013).
16. This US\$103 million is a sum of the price paid by the DRC for buying back the Frontier licence plus the extra \$23 million that the offshore companies could theoretically receive for selling on Lonshi (see footnote below for more detail).
17. Note that the \$60 million received by Sodimico in 2010-2011 included more than just the Frontier licence. For the purposes of this minimum loss analysis, we have not sought to disaggregate the \$60 million paid to Sodimico across the Frontier licence and other assets. Instead, we attribute the \$60 million price solely to the Frontier licence and consider the \$20 million loss as having been made in relation to that asset alone. Accordingly, we assume that nothing was paid for the Lonshi mine and other licences. Had the \$60 million been disaggregated in these calculations, the estimated loss for Frontier may have ended up being higher but the estimated for Lonshi would have been lower, thus yielding the same result.
18. Lonshi was worth 22.5% of the value of Frontier, based on the averages of commercial valuations from 2010. According to a 17 August 2011 Bloomberg piece, Oriel Securities in September 2010 valued Frontier at \$1.4 billion and Lonshi at \$250 million (Congolese State Miner Sells Stake in Former First Quantum Mines, <http://www.bloomberg.com/news/2011-08-17/congolese-state-miner-sells-stake-in-former-first-quantum-mines.html>). A July 2010 report by Numis valued 100 % of Lonshi at \$392 million and 95 % of Frontier at \$1.568 billion (which would put 100 % at \$1.65 billion). However, the Frontier valuations also include a factory. A technical report by First Quantum, filed with Canadian regulations on 21 December 2006, puts the cost of the factory at \$115.8 million. Subtracting this factory cost estimate from the Frontier valuations yields a rough adjusted valuation for the Frontier mine of approximately \$1.284 billion under the Oriel valuation and \$1.535 billion under the Numis valuation. Accordingly these adjusted valuations yield a ratio of the value of the Lonshi mine to the value of the Frontier mine of about 19.5% based on the Oriel estimates and 25.5% based on the Numis estimates. The average of these two ratios is approximately 22.5%. We have applied this ratio to the actual sale price of the Frontier mine to derive an implicit "theoretical" sale price of the Lonshi mine. On the basis of the 2012 ENRC purchase price for the Frontier licence (which permits use and exploitation of the Frontier mine) of \$101.5 million, the 22.5% ratio implies a theoretical sale price of Lonshi at \$22.842 million. Since we have already subtracted the \$60 million received by Sodimico for the sale of Sodifor in our accounting of the value lost for Frontier (see the previous footnote), our methodology requires us to assume that there is no payment received by the state or state-owned enterprises for transferring the Lonshi asset to offshore companies (to avoid double-counting). Accordingly, the theoretical sale price of \$22.842 million is also the theoretical loss to the DRC in its disposition of the Lonshi asset (rounded above to \$23 million).
19. See contract for the sale of 25% of Kansuki by Gécamines to Biko Invest Corp of 28 March 2011, published on the DRC's Ministry of Mines website: http://mines-rdc.cd/fr/documents/contrat_cession_parts_sociales_biko.pdf (last accessed 1 March 2013).
20. See contract for Kansuki, referred to above.
21. A Deutsche Bank valuation published 6 June 2011 put a 37.5 per stake held by the Swiss commodities firm Glencore in Kansuki at \$313 million – extrapolating from this would give a value of \$209 million for a 25% stake (the report can be viewed at <http://www.scribd.com/doc/57254342/Db-Glencore-Initiation>, last accessed 1 March 2013). Later that month, Liberum Capital valued Glencore's stake in Kansuki at \$86 million, which would put a 25% share at \$57.25 million ("Glencore: unapologetically unique", 29 June 2011). The average of the two extrapolated valuations for the 25% stake is \$133.125 million. It should be noted that a January 2013 Bank of America Merrill Lynch report a much higher valuation for Kansuki was given, putting Glencore's 37.5% stake at \$692 million, from which one could extrapolate that a 25% stake would be worth \$461 million (report entitled "European Metals & Mining – Glencore/Xstrata: merger update, and detailed pro-forma estimates").
22. See contract on the DRC's Ministry of Mines website: http://mines-rdc.cd/fr/documents/contrat_cession_parts_sociales_rowny.pdf, last accessed 1 March 2013.
23. See contract for Mutanda on the DRC's Ministry of Mines website, referenced above.
24. Based on a 6 June 2011 report from Deutsche Bank (<http://www.scribd.com/doc/57254342/Db-Glencore-Initiation>, last accessed 9 April 2013) and a 29 June 2011 report from Liberum Capital ("Glencore: unapologetically unique"), Glencore's 40% stake at the time would be worth \$1.251 billion and \$1.93 billion, respectively, meaning that Gécamines'

20% stake would be worth \$625.5 million or \$965 million. Additionally, the 20% stake in Mutanda would be worth: \$353 million on the basis of a Nomura Equity Research briefing of May 2011 (Figure 34, page 22, valuing 40% of Mutanda at \$706 million); approximately \$375 million on the basis of a graph published in a December 2011 research note by BMO Capital Markets; and \$849 million on the basis of figures presented in the 4 May 2011 Golder Associates "Minerals Expert's Report: Mutanda" included in Glencore's May 2011 IPO prospectus, once royalties are taken into account. (Regarding the Golder Associates valuation, the report notes on page 7 that "[t]he valuation was done at a discount rate of 10%, base date 1 January 2011. The net present value (NPV) of Mutanda is USD 3 089 million. The net present value (NPV) of Glencore's investment in Mutanda is USD 1 318 million.") Glencore International PLC, "Prospectus", May 2011. It should be noted that in September 2011 Gécamines responded to queries from the IMF with a public letter, saying: "Gécamines Sarl a évalué ses parts sociales dans MUMI Sprl à 137 millions de dollars américains, bien au-delà de la valorisation qu'en a faite BNP Paribas, en avril 2010, soit 108 millions de dollars américains, dans une approche « basée sur un escompte des flux de trésorerie »." (Translation: "Gécamines Sarl valued its shares in MUMI SPRL [Mutanda Mining] at \$137 million, far more than the valuation BNP Paribas did in April 2010 of \$108 million in an approach based on a discounted cash flow.") (<http://www.congomines.org/wp-content/uploads/2011/11/GCM-2011-ResponseFMIVenteMumi.pdf>) The letter gives the impression that Mutanda alone was sold for \$137 million – whereas in fact this sales tag was for Kansuki and Mutanda combined. Regarding the reference to a BNP valuation of \$108 million for Mutanda (see Michael J. Kavanagh and Franz Wild, "Gécamines of Congo Defends Sale of Stake in Glencore Mines", Bloomberg 13 October 2011). We have difficulty accepting the BNP Paribas valuation that Gécamines cites as credible, given that: neither Gécamines nor any other party has published the valuation nor even any details relating to it; and that it differs so widely from the other five valuations obtained by Global Witness, some of which were received in printed form, along with details of the calculations. In an e-mail of 16 May 2012, BNP Paribas wrote: "BNP Paribas was mandated on September 2, 2009 by Gécamines to review certain assets of the company. A report was delivered on April 2, 2010. We want to underline that our review was not a 'Fairness Opinion'. It was also not done in the context of an asset sale negotiation. After the report was delivered, BNP Paribas did not perform any further work on that matter for Gécamines. We understand from public sources that Gécamines sold some of its assets 18 months later, around the end of 2011, under a different chairmanship. BNP Paribas was not involved in any of these asset sales. Our methodology, which included forecasts for the period and data provided by the company at the time (i.e. dating prior to Q1 2010), was the methodology in use in the profession. We are very sorry but BNP Paribas is linked by confidentiality clauses with its client, that's why we can not provide you with further information." The January 2013 Bank of America Merrill Lynch report referenced above – and not included in our calculation of average values, as it was published nearly two years after the sale to Rowny – gave a valuation of \$2.876 billion for 60% of Mutanda, which would put a 20% stake at \$959 million. This recent valuation reinforces the impression that the BNP Paribas valuation Gécamines cites was far too low. Overall, the average of commercial valuations for Mutanda is calculated as follows, relying on the Deutsche Bank, Liberum, Nomura Equity, BMO Capital Markets, and Glencore/Golder Associates valuations only: $(625.5 + 965 + 353 + 375 + 849)/5 = 633.6$.

KOLWEZI PROJECT



KANSUKI PROJECT



Source: Company documentation cited in Annex 1

84. For 2011, 1,646 versus 700 on ASX and 191 on LSE/AIM. • 80% of all global mining equity financing transactions are done on TSX and TSX.V (2,021 for 2011). TSX and TSXV raises one third of equity capital globally for mining (C\$12.5 billion in 2011). 50% of the 9,500 mineral projects held by TSX and TSX.V companies are outside of Canada.
85. Ncube, M. (2012), "African mining – opportunities and challenges", *How We Made It In Africa*, accessed April 16, 2013, www.howwemadeditinafrica.com/african-mining-%E2%80%93-opportunities-and-challenges/23063/
86. Pearson, S. and W. MacNamara (2011), *Vale faces increased competition in Africa*, Financial Times, London, accessed April 16, 2013, www.ft.com/intl/cms/s/0/8819447e-27dc-11e1-a4c4-00144feabdc0.html#axzz2KLFNLolF
87. BBC News (2012), "Total sells Nigeria oil stake to China's Sinopec", BBC, London, accessed April 16, 2013, www.bbc.co.uk/news/business-20397492
88. Business Day (2012), "Sirius Energy wins oil block concession in Niger", Business Day, Lagos, accessed April 16, 2013, www.businessdayonline.com/NG/index.php/oil/41784-sirius-energy-wins-oil-block-concession-in-niger
89. Business Excellence (2010), "African Minerals agrees \$1.5 billion Chinese deal", Business Excellence, Norwich, accessed April 16, 2013, www.bus-ex.com/article/african-minerals-agrees-1.5-billion-chinese-deal
90. Brautigam D. (2011), *Aid "with Chinese Characteristics": Chinese Foreign Aid and Development Finance meet the OECD-DAC Aid Regime*, Journal of International Development, Vol. 23, No. 5, Sheffield.
- Baynton-Glen, S. (2012), "Beyond trade – China-Africa investment trends", Standard Chartered, accessed April 16, 2013, www.standardchartered.com/en/resources/global-en/pdf/Research/Beyond_trade_China-Africa_investment_trends.pdf
91. Bloomberg News (n.d.), "Fitch ratings", accessed April 16, 2013, <http://topics.bloomberg.com/fitch-ratings/>
92. Bloomberg News (2012), "Ghana Signs \$1 Billion Loan With China for Natural Gas Project", accessed April 16, 2013, www.bloomberg.com/news/2012-04-16/ghana-signs-1-billion-loan-with-china-for-natural-gas-project.html
93. IMF (2012), IMF Country Report: Angola: 2012 Article IV Consultation and Post Program Monitoring, August 2012, No. 12/215, accessed April 18, 2013, <http://www.imf.org/external/pubs/ft/scr/2012/cr12215.pdf>
94. *ibid.*
95. Pushak, N. and Foster, V. (2011), *Angola's Infrastructure: A Continental Perspective*, World Bank, Washington DC, accessed April 16, 2013, http://siteresources.worldbank.org/ANGOLAEXTN/Resources/AICD-Angola_Country_Report.pdf
96. The Economist (2011), "The Queensway syndicate and the Africa trade", The Economist, London, accessed April 16, 2013, www.economist.com/node/21525847
97. Totally World Press (2012), "Nigeria's oil losses revealed", accessed April 18, 2013, <http://totallywp.com/2012/10/25/nigerias-oil-losses-revealed/>
98. Federal Ministry of Petroleum Resources (2012), *Report of the Petroleum Revenue Special Task Force*, Federal Ministry of Petroleum Resources, Nigeria, accessed April 16, 2013, <http://publicaffairs.gov.ng/report-of-the-petroleum-revenue-special-task-force/>
99. Transparency International and Revenue Watch (2011), *Promoting revenue transparency 2011 report on oil and gas companies*, accessed April 18, 2013, http://www.euractiv.com/sites/all/euractiv/files/TI_PRT_2011_report_FINAL_EN.pdf
- Human Rights Watch (2012), *World Report Chapter: Equatorial Guinea 2012*, accessed April 2013, https://www.google.ch/search?sourceid=ie7&q=human+rights+watch+world+report+2012+equatorial+guinea&rls=com.microsoft:fr-ch:IE-Address&ie=UTF-8&oe=UTF-8&rlz=117LENP_enCH466CH467&redir_esc=&ei=tedyUZfKNoXkOpjggegF
100. For example, in 2010 the World Bank and the DRC government agreed on an Economic Governance Matrix, which stated (in its version of March 2011) that the DRC would publish all contracts between state mining companies and private partners within 60 days of their being approved, in conformity with laws and regulations. The Matrix came into effect in December 2010. Accessed March 24, 2013, www.globalwitness.org/sites/default/files/La%20Gouvernance%20Econometrique%20-%20Matrice%20des%20actions%20-%2030mars2011.pdf
101. Ministry of Mines, Democratic Republic of the Congo, accessed April 16, 2013, http://mines-rcd.cd/fr/documents/decret_011_26_pm.pdf
102. The IMF ended a three-year loan programme with the final three tranches unpaid in December 2012, citing the DRC authorities' failure to publish contract details relating to the subsequent sale of Gécamines' 25% remaining stake in Comide as the reason for cutting off the loan. See Bloomberg, "IMF Halts Congo Loans Over Failure to Publish Mine Contract", 3 December 2012 (<http://www.bloomberg.com/news/2012-12-03/imf-halts-congo-loans-over-failure-to-publish-mine-contract-2-.html>, last accessed 24 March 2013). See also comments by Antoinette Sayeh, Director of the IMF's African Department: "Given the significance of natural resources in this economy and the huge impact that natural resources can have, we think it's very important to help DRC improve in terms of its governance," (<http://www.bloomberg.com/news/2012-12-05/gertler-earns-billions-as-mine-deals-leave-congo-poorest.html>, last accessed 9 April 2013). A September 24 2012 IMF statement noted that "accountability and transparency in the operations of state-owned enterprises (SOEs) in extractive industries" contributed to the delays in completing the fourth and fifth tranches of the loans, which were ultimately not paid out at all because of the cancellation of the loan programme.
103. Kavanagh, M. (2012), "African Development Bank Halts Congo Budget Support Over IMF Cut", accessed April 16, 2013, <http://www.bloomberg.com/news/2012-12-20/african-development-bank-halts-congo-budget-support-over-imf-cut.html>
104. Interview with donor source in Kinshasa, March 9, 2011.
105. Data on health and education spending is drawn from: http://www.ministeredubudget.cd/esb2012/esb_fin_dec_2012_new/esb_global_par_grande_fonction_detail.pdf (accessed 23 March 2013). This document summarizing government expenditure in 2012 says that 166.5 billion Congolese francs was spent on health and 462.5 billion Congolese francs on education. Taking an exchange rate of 900 Congolese francs to the dollar, this gives a total of US\$698 million (US\$185 million for health plus US\$513 million on education).

106. Smith, E. and P. Rosenblum (2011), "Enforcing the Rules: Government and Citizen Oversight of Mining", Revenue Watch Institute, New York, accessed April 16, 2013, www.revenuewatch.org/sites/default/files/RWI_Enforcing_Rules_full.pdf
107. In closing comments at national mining conference held in Lubumbashi, DRC, January 30-31, 2013.
108. Kansuki, Mutanda, Frontier, Lonshi, Kolwezi, SMKK and Comide.
109. For example, in August 2011, the DRC's mines minister denied that 30 per cent of the Sodifor joint venture, which owned the Frontier and Lonshi licences, had been sold five months earlier. This denial proved to be false when the March 28, 2011, contract was later published on the Ministry of Mines website: Reuters, "Congo minister denies reports of mine stake sale Frontier and Lonshi", August 8, 2011, accessed March 24, 2013, www.reuters.com/article/2011/08/17/ozabs-congo-democratic-mining-idAFJOE77G0KH20110817.
110. The right of first refusal was originally assigned to Melkior Resources in 1999 as per Article 23.3 of the joint venture contract between Melkior and Gécamines in respect of SMKK, accessed March 24, 2013, http://mines-rdc.cd/fr/documents/avant/gcm_melkior_resources_inc.pdf. This right of first refusal would have been transferred to CAMEC when it bought the stake in 2008, and then to ENRC when it purchased CAMEC in 2009. Page 15 of the contract governing the sale of Gécamines' sale of its remaining 50 per cent to Emerald Star states that the sale would only come into effect once Cofiparinter SA (a wholly owned subsidiary of ENRC) exercised its right of first refusal (http://mines-rdc.cd/fr/documents/contrat_cession_parts_gcm_smkk_fev_2010.pdf, last accessed March 24, 2013).
111. See page 21 of ENRC Africa Holdings Limited Financial Statements for the year ended March 31, 2010, filed at UK Companies House.
112. The contract is available at: http://mines-rdc.cd/fr/documents/contrat_cession_parts_gcm_smkk_fev_2010.pdf
113. Page 21 of ENRC Africa Holdings Limited Financial Statements for the year ended March 31, 2010, filed at UK Companies House.
114. On the additional US\$50 million payment, see page 21 of ENRC Africa Holdings Limited Financial Statements for the year ended March 31, 2010, filed at UK Companies House.
115. According to a court judgment in the British Virgin Islands (BVIHC (COM) 2010/0125, page 3) the Highwind Group signed its contract on the "same day" as Gécamines cancelled First Quantum's licence over Kolwezi. The contract between Gécamines and the Highwind Group, dated January 2010, is available at http://mines-rdc.cd/fr/documents/contrat_gcm_highwind.pdf (last accessed May 29, 2012).
116. The Highwind contract with Gécamines is available on the DRC's Ministry of Mines website: http://mines-rdc.cd/fr/documents/contrat_gcm_highwind.pdf, last accessed March 24, 2013). See page 21 for the signature bonus.
117. See August 20, 2010, ENRC press release, accessed April 16, 2013, www.enrc.com/Media/press-releases
118. See ENRC press statement of December 7, 2012, accessed April 16, 2013, www.enrc.com/Media/press-releases
119. For 2012 production data for Mutanda, see the Glencore 2012 annual report, accessed April 16, 2013, www.glencore.com/documents/GLEN_Annual_Report_2012.pdf. The Kansuki and Mutanda mine deals were conducted on the same day. The two projects are expected to produce 40,000 tonnes of cobalt a year at full production, according to Deutsche Bank, citing its own data and information from Golder Associates, which produced valuations and surveys in the Glencore IPO prospectus. Congo's Central Bank estimated copper output in 2011 at 522,000 tonnes, whereas Kansuki and Mutanda should produce over 200,000 metric tonnes according to Glencore, accessed April 14, 2013, www.bcc.cd/downloads/pub/bulstat/Bulletin_statistiques_janvier_2012.pdf
120. SAMREF Congo SPRL entered into a contract with the DRC's state-run mining company Gécamines in 2001, when it was awarded 80 per cent of the mine, with Gécamines holding onto 20 per cent. The joint venture was known as MUMI SPRL. See contract, accessed April 14, 2013, www.congomines.org/wp-content/uploads/2011/10/A3-MUMI-2001-ContratPartenariatCessionSamref-Gecamines.pdf
121. In the contract governing the sale of 20 per cent of Mutanda to Rowny, it is stated that SAMREF waived its right of first refusal. The contract can be found on the Gécamines website, accessed April 14, 2013, www.gecamines.cd/files/contrat_cession_parts_sociales_rowny.pdf (pages 3-4, points c and d).
122. See Congo's EITI report for 2010, accessed April 14, 2013, www.itierdc.com/pdf/RAPPORT%20ITIE%202010.pdf, p. 63.
123. Gécamines stated in a sales contract dated March 28, 2011, which was not disclosed until nearly a year later, that Kansuki Investments SPRL (of which Glencore now owned half) had declined to execute a right of first refusal to acquire the remaining 25 per cent of Kansuki mine. Under the contract, Biko Invest Corp bought a 25 per cent stake in the Kansuki joint venture: accessed April 14, 2013, http://mines-rdc.cd/fr/documents/contrat_cession_parts_sociales_biko.pdf
124. Contract for the sale of the 20 per cent in the Kansuki concession to Biko: accessed April 14, 2013, from http://www.gecamines.cd/files/contrat_cession_parts_sociales_biko.pdf
125. "Responses from Dan Gertler to Global Witness", May 2012: Accessed April 14, 2013, www.globalwitness.org/sites/default/files/library/Responses%20by%20Dan%20Gertler%20to%20Global%20Witness.pdf
126. Transparency International and Revenue Watch (2011), Promoting revenue transparency 2011 report on oil and gas companies, accessed April 18, 2013, http://www.euractiv.com/sites/all/euractiv/files/TI_PRT_2011_report_FINAL_EN.pdf
127. Nigeria EITI: Making transparency count, uncovering billions. Nigeria (2012) <http://eiti.org/files/Case%20Study%20-%20EITI%20in%20Nigeria.pdf>
128. The Economist (2013), "The missing \$20 trillion", The Economist, London, accessed April 14, 2013, www.economist.com/news/leaders/21571873-how-stop-companies-and-people-dodging-tax-delaware-well-grand-cayman-missing-20
129. The company in question was Sierra Leone Hard Rock (SL) Ltd. Source: Africa Minerals Ltd (2011), Annual Report 2011, African Minerals Ltd, London, accessed April 16, 2013, www.african-minerals.com/am/uploads/reportsa/AfricanMinerals2011WEB.pdf
130. De Renzio, P., A. Gillies and A. Heuty (2013), background paper commissioned by the Africa Progress Panel.
131. International Budget Partnership (2012), Open Budget Survey Index, International Budget Partnership, Washington



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OUT OF AFRICA

British offshore secrecy and Congo's
missing \$1.5 billion

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EXECUTIVE SUMMARY

Democratic Republic of Congo should be one of the richest countries in the world, thanks to the trillions¹ of dollars' worth of gold, diamonds, copper, cobalt and other natural resources in its soil. The demand for those minerals – used to make smartphones, computers, batteries and countless other popular consumer goods – is incredibly high, yet rampant corruption and mismanagement has kept Congo's citizens in poverty while the illicit trade in minerals has funded violence and armed conflict for decades. Congo consistently ranks at or near the bottom of the United Nations Human Development Index.² One in seven children is dead before the age of five³ and nine percent of the population is considered in need of humanitarian assistance.⁴

While the vast majority of Congo's population suffers from a lack of basic services, the state has sold off valuable mining assets at suspiciously low prices, losing the Congolese treasury hundreds of millions of dollars in crucial revenue in the process. This money has instead gone to a handful of anonymous companies, whose real owners are hidden under layers of paper companies, located in an offshore tax haven in the British Overseas Territories. The secrecy of the offshore business world which facilitated these deals allows corrupt politicians and businessmen and women to launder money, dodge taxes and strike suspect deals while keeping their identities secret.

This exploitation of Congo's natural resources reached a peak around Congo's presidential elections five years ago; it is particularly relevant today as Congo is due to go to the polls again in November 2016. Journalists and Global Witness researchers have previously revealed how, in the period around the disputed 2011 elections, a series of suspicious mining deals was struck with anonymous offshore companies that cost Congo \$1.36 billion in potential revenues. Reports at the time suggested that proceeds from at least one of these questionable sales were used to contribute to an election fund.

Each deal took advantage of the secrecy regime in the British Virgin Islands – a UK Overseas Territory and tax haven – to help disguise the real people involved; major mining companies and Israeli businessman Dan Gertler were also central to the transactions. Gertler, a billionaire, is a close friend of Congo's President Joseph Kabila, who eventually won the contested polls amid claims of ballot stuffing and intimidation.⁵

The astonishing revelations in the 'Panama Papers' data leak – a slew of 11.5m files from the world's fourth biggest offshore law firm, Mossack Fonseca – gave the public an unprecedented glimpse into the murky world of anonymous offshore tax havens used by politicians, wealthy businessmen and criminals.⁶ It was this offshore world that was exploited to facilitate



Photo: Simon Dawson/Bloomberg via Getty Images

A worker stands beside a gigantic mining excavator at Katanga Mining Ltd.'s KOV copper and cobalt mine in Kolwezi, Katanga province, Democratic Republic of Congo.

these huge natural resources deals that drained so much money out of Congo. According to reports, Gertler is mentioned more than 200 times in the Mossack Fonseca documents.⁷ The law firm also set up two of Gertler's companies that obtained oil blocks in eastern Congo under controversial circumstances.⁸ Mossack Fonseca's dealings with the companies ceased soon after they were set up in 2010.

Now in 2016, Kabila is reported to be seeking a way to stay in power despite being obliged by the constitution to step down at the end of his second mandate in December 2016. As elections loom, Global Witness has seen evidence of mining deals being struck without public announcement, with no clarity on where the cash is going. History appears to be repeating itself, with Congo's valuable natural resources at risk of being stolen to fund an election campaign instead of the basic services that the country's population needs so urgently.

2016 is not only a watershed moment in Congolese electoral politics; it is also a critical year in the global fight to end the offshore secrecy that facilitated these deals. UK Prime Minister David Cameron is hosting an anti-corruption summit in May where company ownership transparency will be on the table. It is difficult to see how the summit can be a success unless Cameron clears up the financial secrecy for sale in the UK's own constitutional backyard. In the wake of the Panama Papers, Cameron has said that UK law enforcement will have fast access to beneficial ownership information of companies incorporated in UK tax havens,⁹ but this is not enough. A central registry of ownership information must be made publicly available if it is to be effective. It is essential for the people of Congo that these secrecy laws change, so that the identities of all of the owners of the companies who benefitted from these deals can be revealed and if any were involved in any wrongdoing, brought to justice.

Above all, it is essential that Congo's mineral wealth starts to benefit the Congolese population. Congo has recently suffered from the temporary downturn in world metals prices but has enjoyed a mining boom over recent years, producing a record one million tonnes of copper in 2014.¹⁰ However this has failed to translate into improvements for the vast majority of Congolese. Conflict and instability persist: in late 2012 an armed rebellion erupted in Congo's war-torn North Kivu province and lasted for 20 months.¹¹ Basic services like roads, hospitals and schools are still largely absent. The \$1.36 billion lost to the suspicious mining deals around the elections translates into

twice the country's annual spending on health and education¹² – a spectacular loss to the public purse.

Congo's government announced in March 2016 that a revision of its mining law would be suspended until metal prices improve.¹³ This suspension is particularly worrying as the revision would have offered a chance to introduce robust transparency and accountability measures in Congo's mining sector. Global Witness is warning that unless Congo strengthens and enforces its mining law, the country could once again see its natural resource wealth siphoned away from the Treasury and used to help fund an election that will likely be brutally contested and possibly even unconstitutional.

Fighting an election campaign is not cheap. If dodgy deals like these secret sales helped in part to finance contested polls marred by violence in the past, then now is the time for change. In particular Global Witness is calling for:

- Congo's government and state-owned mining companies to be pressured – from within the country as well externally – to adhere to domestic laws and international obligations by publishing the details of new mining, oil and gas contracts, especially in the lead up to the 2016 elections.
- Congo's new mining law to ensure that there is an open and public tendering process for new mining rights, that new contracts are published promptly and are freely accessible, that the identities of the ultimate beneficial owners of companies are made public, and that state-owned mining companies are monitored, audited, well-governed and held to account.
- Congo's government to introduce a public register of the beneficial owners of all the companies who bid, invest and operate in extractive industries.
- The UK and other developed economies to insist on public registers of beneficial owners and put an end to tax haven secrecy jurisdictions.
- The companies and individuals involved in the secret sales scandal to be fully investigated by the relevant Congolese and foreign authorities and, where wrongdoing is revealed, prosecuted.

What follows is the story of these secret mining sales, from Congo via Caribbean tax havens to the heart of London's financial district. It will look at the fallout from the exposé of the deals, show how the loopholes

that allowed them to happen remain in place, and examine what needs to be done to prevent Congo's 2016 elections being beset by the same turmoil as in 2011.

HOW CONGO LOST \$1.5 BILLION IN SIX SECRETIVE DEALS

Journalists and Global Witness researchers lifted the veil on a series of suspicious mining deals signed in Congo between 2010 and 2012. In each case undervalued mining rights – sometimes sold at less than five per cent of their market valuation – passed from the Congolese state to the hidden owners of offshore companies. The companies or the assets they held were, ultimately, bought up by huge multinational companies, notably international mining company ENRC (Eurasian Natural Resources Corporation) and Switzerland-based, London Stock Exchange-listed Glencore. The full list of the ultimate beneficiaries of the mining asset sales was, and still is, unknown. But in at least five cases the offshore companies used to smuggle the mining rights to the multinationals were linked to Dan Gertler. If the Congolese state had done business directly with ENRC and Glencore on these mining deals it could have received at least \$1.36 billion more than it did by selling to Gertler's offshore companies.¹⁴

If these mining transactions are added to a similar deal in 2014 involving the sale of a Congolese oil licence which Dan Gertler held,¹⁵ Congo is estimated to have lost at least \$1.5 billion¹⁶ – equivalent to almost one fifth of the country's annual budget. That money was generated from Congo's sovereign mineral wealth; it should have gone to the state and been reinvested into much-needed public services. Instead it went to Gertler and any other joint-owners of his secret companies. Gertler's personal fortune now stands at around \$1.25 billion according to the Forbes rich list.¹⁷

The anonymity of the offshore system allowed these deals to take place without proper scrutiny and made it incredibly difficult to find out who had benefited at the expense of the Congolese state. The details only came to light when Global Witness researchers, journalists and a British MP managed to piece together clues from leaked contracts, scraps of information buried in corporate documents, and patterns in how the offshore companies were

registered. The story that emerged placed Dan Gertler as the key middleman between the Congolese state and ENRC and Glencore.

The size of the sums involved, the implication of major London-listed companies and the role of President Kabila's close friend Gertler sent shock waves through the City of London; as the story came to light in 2013 it was splashed across the front page of the Financial Times.¹⁸

The evidence indicated that Gertler's close friendship with Kabila [see Box: Gertler, Kabila, and a win-win friendship] enabled him to act as a 'gatekeeper' for mining asset sales in Congo. In other words, if these companies wanted to do business they had to work with – and indeed enrich – Gertler in the process. Global Witness contends that ENRC and Glencore, in spite of the fact that they ought to have known the corruption risk inherent in doing business with Gertler in those circumstances, entered into the deals and acted to protect his shareholdings in joint ventures in ways that do not make objective commercial sense. They appear to have consented to working with the gatekeeper in order to secure the assets they desired.

Gertler has been accused of making considerable contributions to Kabila's fund for the disputed 2006 elections,¹⁹ though he denies this. Both Reuters and Bloomberg reported that one of the suspicious sales of mining assets in the run up to the 2011 elections – a sale which directly involved Gertler – also led to the state mining company involved making a \$10 million contribution to an election fund.²⁰ The 2011 elections were marred by violence and claims of ballot stuffing and intimidation of the opposition. Global Witness asked Gertler and his representative whether he or his companies had contributed to Kabila's election campaigns in any way, but their reply failed to answer the question.

These secret sales of Congo's mines therefore not only improved Gertler's bank balance but also may have boosted Kabila's war chest for fighting those contested elections: a win-win set of deals for the old friends.

Mr Gertler vigorously disputes the various charges levelled against him, saying that all the offshore companies in the Fleurette Group, his holding company, are ultimately owned by a trust held for the benefit of family members of Mr Gertler. His spokesman has also argued that he did not obtain assets at knock-down values. Glencore and ENRC also deny any wrongdoing.

HOW THE SECRETIVE DEALS WORKED

Two of the deals in particular, both involving ENRC, point to a pattern of connivance between officials, middlemen and companies to secure privileged access to Congo's mineral wealth at knockdown prices. They suggest that the company may have colluded with well-placed politicians and businessmen and enriched a group of offshore companies whose beneficiaries are unknown and could include corrupt Congolese officials.

First came the sale of the Société Minière de Kabolela et de Kipese (SMKK), a high grade copper and cobalt mine part-owned by the Congolese state through its state mining company Gécamines. Gécamines is technically a private company, however the state owns 100 per cent of its shares and, in principle, the company takes its orders from the government.

Between February and June 2010, a 50 per cent stake in SMKK was sold from Gécamines to a Gertler-linked BVI company called Emerald Star Enterprises which then sold it on to ENRC. Journalists and researchers were able to show that Emerald Star sold on its 50 per cent stake to ENRC for a \$60 million profit, just four months after buying it for only \$15 million. Intriguingly, ENRC financed Emerald Star's purchase of the asset from the state months before the deal was even struck.²¹ At this time, Emerald Star did not own the rights to SMKK, although ENRC was apparently confident that it soon would. The fact that ENRC was confident that Emerald Star would be able to purchase part of this state run mine indicates the level of Emerald Star's – and therefore Gertler's – political connections in Congo.

Murkier still, ENRC had a contractual right of first refusal on the initial sale of SMKK, as it already owned the other 50 per cent of the mine which was not being sold. It could have cut Emerald Star out of the deal completely and saved itself \$60 million, but inexplicably decided to not take up this option. Instead, ENRC, which was at the time a London-listed company, chose to pre-finance Gertler's opaque offshore company to buy the stake, allowing Emerald Star to reap vast profits, rather than deal with the government directly.

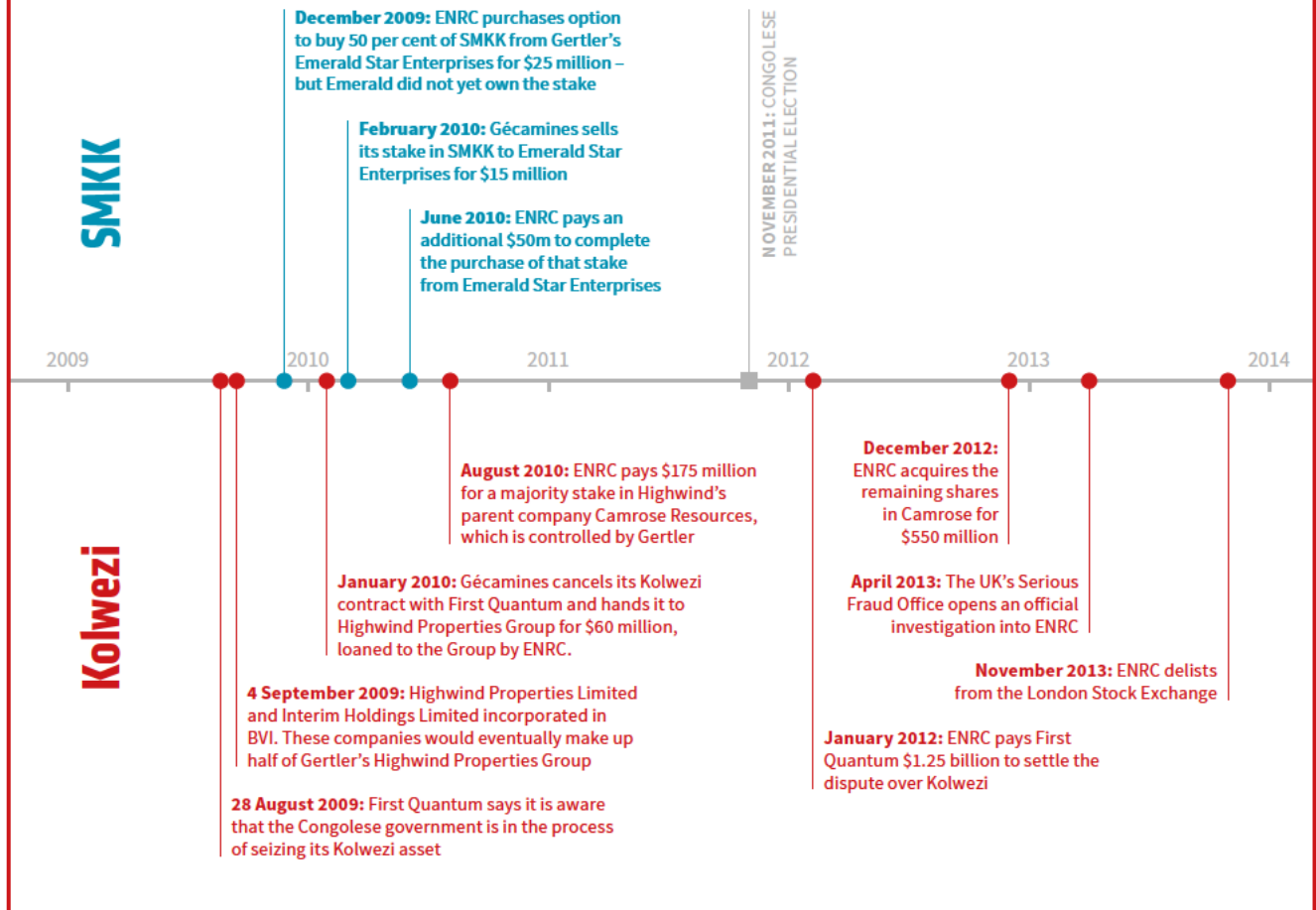
The second of the six deals that clearly demonstrates this murky transfer of assets is the sale of Kolwezi, a mining project in southern Congo that contains rich copper deposits.

Kolwezi was owned by Canadian mining company First Quantum. In January 2010, following a dubious legal process, the state-owned Gécamines cancelled its Kolwezi contract with First Quantum. Immediately, Gécamines secretly awarded a 70 per cent stake in the project to four BVI companies collectively called the Highwind Group, associated with Gertler, which paid a signature bonus of \$60 million.²² In August that year, ENRC acquired part of Kolwezi when it bought 50.5 per cent of Highwind's parent company for \$175 million.²³ Two years later, it bought up the remainder of the parent company for \$550 million.²⁴ Analysts estimate losses to the Congolese state of more than \$600 million from this deal.²⁵

The timing of events leading up to Highwind's acquisition of the Kolwezi contract add weight to the suspicion that Gertler had prior information that First Quantum's licence might become available. Two of his offshore companies involved in the deal, including Highwind Properties Limited, were only created in the BVI at the beginning of September 2009²⁶ – just a few months before First Quantum lost the Kolwezi contract.

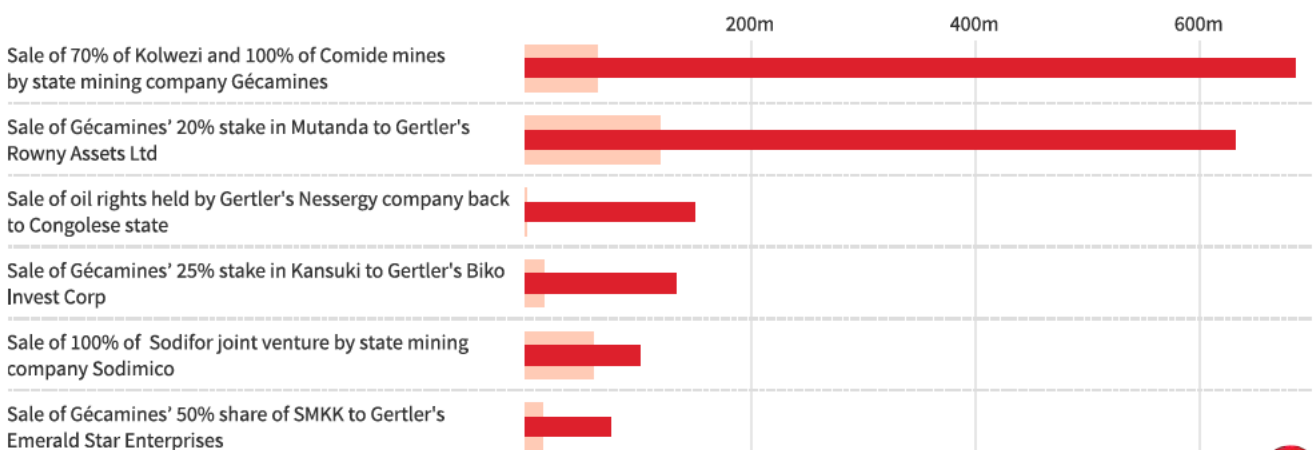
Global Witness has also shown that the commodities giant Glencore made secret loans to offshore companies linked to Gertler and knowingly entered into loss-making deals with him from 2007 to 2010.²⁷ Together Glencore and Gertler took over one of Congo's biggest copper producers, Toronto-listed Katanga Mining. In the process, Glencore enriched Gertler by \$67million in cash and shares channelled through secretive offshore firms.

TIMELINE OF SMKK AND KOLWEZI DEALS



CONGO'S SECRETIVE DEALS: VALUE VS PRICE PAID (US\$)

Price Congo received Price paid by final buyer or estimated commercial value (US\$)



Source: Africa Progress Panel Report 2013 & Global Witness | [Download Data](#) | [Embed](#)

GERTLER, KABILA, AND A WIN-WIN FRIENDSHIP

The story of Gertler's arrival in Congo and his relationship with its president sheds light on how informal networks often take the place of accountable government institutions in Congolese politics and business, and how a few well-placed men can use the secrecy of the offshore world to make huge profits while the vast majority of Congolese people remain stuck in poverty.

It starts with a 23-year-old Gertler arriving in Congo in 1997, when the country was coming to the end of a devastating civil war. He had arrived from Israel seeking rough diamonds, hoping for an introduction to the president.

Gertler's grandfather, Moshe Schnitzer, co-founded the Israeli diamond exchange in 1947 and his father was a diamond dealer. He grew up in the world of diamond trading, and from the mid-1990s he had started to buy and sell rough diamonds that he sourced from some of the most precarious and war-torn countries in Africa.

In Congo, Gertler befriended Joseph Kabila, then in charge of the army. Kabila's father, Laurent-Désiré, had just deposed the dictator Mobutu Sese Seko and become president. A meeting between

Gertler and the elder Kabila followed and the two men struck a \$20 million deal for a monopoly on Congolese diamond exports.

Laurent-Désiré Kabila was assassinated in January 2001 and was succeeded by his son. Joseph Kabila surprisingly cancelled his friend Gertler's diamond monopoly, but the Israeli continued to trade diamonds out of Congo. He began to take a more central diplomatic role and acted as an envoy between Congo, Rwanda and the US as the war was coming to an end. By Gertler's own account, in those fraught and unpredictable years of Kabila junior's reign the diamond dealer stayed loyal to the young president and their bond was reinforced.²⁸

In the aftermath of the war, which came to an end in 2002, Gertler re-established control over Congo's diamond trade through a \$15 million deal to sell 88 per cent of the production of the state's diamond mining company, MIBA, for a period of four years. In 2006 presidential elections were held and Joseph Kabila became Congo's first democratically elected leader since 1960.

The poll was beset by violence between rival factions, and Kabila's government had also courted controversy in its fire-sale of mining rights to international companies in the wake of the war.

In the lead up to and period immediately after the next elections in 2011 more and more suspicious mining deals were signed, siphoning off Congo's sovereign mineral wealth and profiting a small handful of companies and individuals. The deals tended to involve the transfer of assets by Gécamines, the state mining company, and Gertler. In just eight months leading up to the November 2011 elections, companies linked to Gertler "bought shares in five mining ventures" from state mining companies, according to Bloomberg.²⁹

Kabila retained power in the 2011 elections but his win was beset by claims of intimidation and ballot stuffing; independent observers including the UN,³⁰ the Carter Center and the Catholic Church³¹ raised concerns over the validity of the result.



Photo: AP Photo/J. Scott Applewhite

President of the Democratic Republic of Congo Joseph Kabila attending the US-Africa Summit in Washington, D.C., USA.



Emerald Star Enterprises articles of association, which only show the company's name, BVI company number, the date of incorporation, a registered address and the details of the service provider that incorporated the company. The registered address is the same as that of the agent that incorporated the company, Equity Trust, and that address is merely a PO Box.

GETAWAY VEHICLES: THE ROLE OF ANONYMOUS COMPANIES AND THE BRITISH VIRGIN ISLANDS

The key to keeping the beneficiaries of these suspicious sales hidden from view was the use of offshore entities that kept secret the identities of company owners. By setting up his intermediary companies in the BVI, Gertler's name was hidden from the public, the media, investigators, public bodies and law enforcement agencies for long enough to complete initial onward sales to or partnerships with ENRC and Glencore.

Global Witness's research has raised the possibility that corrupt Congolese elites were owners of some of

the offshore companies involved in the secret sales. If true, this could explain how Gertler's companies – sometimes incorporated just months before they received assets and possessing none of the technical expertise or capital required to exploit a mining permit – were able to secure exclusive and privileged access to Congo's mines and profit from them at the expense of the state.

For example, in a deal involving Gertler, ENRC and the takeover of a competitor mining outfit called CAMEC, a series of small offshore companies was created which potentially allowed for rewarding corrupt partners in the Congolese elite.³² Some of these companies quickly disappeared, suggesting the owners cashed out their shares for substantial windfall payments.

Not only did secret companies disguise the real beneficiaries of these deals, but the Congolese state companies involved failed to announce the sales; this made timely scrutiny of the transactions impossible.



'Out of Africa' cartoon.

The BVI – Gertler's offshore jurisdiction of choice – is most often described as a tax haven. In addition, however, it is also a provider of secrecy. When the World Bank looked at more than 200 cases of grand corruption, over 70 per cent involved at least one anonymous company used to try to disguise the real owners and facilitate their crimes. The UK's Overseas Territories were the most-used jurisdictions; the BVI alone came in second on the list.³³

These jurisdictions keep information about company owners, shareholders and directors secret. This veil of secrecy is exactly what criminals – not just tax evaders but also corrupt politicians, mafia bosses and drug cartels – need in order to hide their identity, launder their money and remain one step ahead of law enforcement authorities.

The BVI's regulations have prevented the Congolese people from establishing the full list of owners of the companies that profited from the secret sales of Congolese mining assets. The BVI authorities refuse to release information about BVI company owners – the company documents that are available only show the company's name, BVI company number, the date of incorporation, a registered address and the details of the service provider that incorporated the company. In the case of Emerald Star, the registered address is the same as that of the agent that incorporated the company, Equity Trust, and that address is merely a PO Box.

Even law enforcement officials must go to court in the BVI to obtain ownership information. This can

be an extremely lengthy process. For everyone else, including Congolese citizens, it is impossible to do so. Global Witness is calling for the British government to end these secrecy regulations so that those involved in these deals can be revealed and held to account. At the time of writing, UK tax havens have agreed to share ownership information, but only with UK law enforcement. It is vital, however, that registers of beneficial ownership are open rather than closed, so that the public, journalists, NGOs and other governments can access the information and expose suspicious activity.

THE FALLOUT: WHAT'S HAPPENED SINCE THE SCANDAL BROKE

Since the story of these sales began to break, a few steps have been taken to remedy some of the institutional weaknesses that allowed the deals to take place and to bring wrongdoers to justice. However there is much more still to be done, in Congo and in other jurisdictions. Congo was in the process of revising its mining law, which should have strengthened the legislation on transparency and accountability in the sector. However, the revision process was suspended in March 2016 and remains so at the time of going to press. There is now a serious risk of backsliding into a scenario where Congo's prized mining assets can be sold off secretly, below market value and for the benefit of private individuals rather than the Congolese population.

Congo has been put under pressure by international donors to stem the losses incurred by these irregular deals. Congo's prime minister issued a decree³⁴ in 2011 requiring the publication of the terms of all new mining and oil deals involving the government within 60 days. Many contracts have now been published, which is encouraging, though key sections are still missing. In 2012 the IMF suspended a \$532 million, three-year loan programme³⁵ with Congo over concerns about the unpublished contract for a deal linked to Gertler.

Some efforts have been made in Congo to prevent further clandestine sales of state assets to companies associated with Gertler, although this has created tensions between government officials and the head of the state mining company Gécamines. In August 2013 the Mines Minister, Martin Kabwelulu, was forced

to write to Albert Yuma, Chairman of Gécamines, in protest at an apparent plan to cede the state's stake in a major copper mining project to Gertler.³⁶ Yuma continued to suggest Gécamines may sell to Gertler until the prime minister halted all asset sales in the midst of a cabinet reshuffle³⁷ and following pressure from Congolese civil society.³⁸ The outrage over the previous secret deals seems to have prevented at least this major new deal from taking place.

However there have been no other notable concrete actions by the Congolese authorities to close down the institutional weaknesses – an opaque tendering process for mining rights, no public register of beneficial ownership, and the lack of transparency and accountability in the state mining companies – that allowed for the secret sales to take place. Nor have they opened an investigation into any of these events. The revision of Congo's mining law began four years ago, offering an opportunity to introduce more robust legislation, however the recent suspension of the review process has closed off this avenue for improving transparency and accountability in Congo's mining sector.³⁹



Dan Gertler prepares for a tour of the Mutanda copper and cobalt mine in Katanga province, Democratic Republic of Congo.

Photo: Simon Dawson/Bloomberg via Getty Images

There has also been limited progress on the international stage. In July 2014 the Extractive Industries Transparency Initiative (EITI), a global multi-stakeholder initiative that promotes transparency in oil, gas and mining sectors, declared that Congo was compliant⁴⁰ with its reporting standards. Congo has sought full EITI member status since becoming a candidate country in 2008, despite a temporary suspension beginning in April 2013 following a poor performance in an EITI audit. This move towards more transparency has already begun to pay off, as Congo's oil and mining sectors brought in a record \$2 billion in 2014, dramatically up from the \$400 million reported in 2007 and despite falling commodity prices.⁴¹

Some action has been taken against the companies involved in the scandal. Following its acquisition of the Kolwezi mining project, ENRC became embroiled in a long-running dispute with Canadian company First Quantum, the original owner. In January 2012 ENRC agreed to pay an enormous sum, \$1.25 billion, to First Quantum to settle the matter.⁴² The controversy surrounding ENRC's dealings with Gertler led to boardroom disputes, and then in April 2013 the UK's Serious Fraud Office officially opened an investigation into ENRC and the alleged fraud, bribery and corruption.⁴³ The investigation is ongoing. Since it was launched ENRC delisted from the London Stock Exchange and now operates as ERG (Eurasian Resources Group).⁴⁴ Its new CEO has sought to draw a line under the scandal.⁴⁵

While the settlement with First Quantum undoubtedly hurt ENRC, the Congolese state did not receive a penny of the pay-out. ENRC seemingly accepted an adverse settlement of the dispute with First Quantum but has retained its Congo assets; Global Witness contends that the settlement is tantamount to an admission that the acquisition of Kolwezi was irregular.

To date, however, no regulatory authority has launched an investigation into Glencore's dealings with Gertler, and Glencore remains listed on the London Stock Exchange. Similarly, Gertler has not yet faced any sanctions for his role in the scandal. Global Witness calls on regulatory authorities in the UK to launch an investigation into Glencore's role in these deals and its relationship with Gertler, and for Gertler to face an investigation in the UK and other relevant jurisdictions, including but not limited to Congo and Israel. Where wrongdoing is revealed, the companies and individuals involved must be prosecuted.

A CONGOLESE OR BRITISH SCANDAL: THE ROLE OF THE BRITISH VIRGIN ISLANDS

The scandal has also brought new attention on the secretive financial structures that mask the real owners of offshore companies. The UK's tax havens played a central role in the facilitation of these secret sales. As early as 2011, a British Member of Parliament published a list of 59 shell companies involved in the Congolese mining sector: 47 of them were based in the BVI.⁴⁶

The Financial Secrecy Index ranks countries according to the level of financial opacity they provide – the list is a rogues gallery of regulatory frameworks that are crucial in the facilitation of corruption. The 2015 index ranks the UK in 15th place, but the index notes that if the UK and its satellite tax havens (its Crown Dependencies and Overseas Territories) were considered together, it would be in first place.⁴⁷

Illicit money flows into these offshore jurisdictions and then onto the major global financial centres, including London. Gertler has made prodigious use of secrecy

regulations in jurisdictions that are part of the UK network, especially the BVI. The incorporation of offshore companies sustains an entire secondary industry of financial services companies and lawyers. Gertler has regularly retained Trident Trust in the BVI and Hassans in Gibraltar. There is no suggestion that these service providers acted other than in accordance with local laws.

While the sales of mining assets should have been announced by the Congolese authorities, the UK is ultimately responsible for the tax havens that allowed these deals to take place in the shadows. The UK is legally responsible for the good governance of its Overseas Territories.⁴⁸ A UK government white paper stated that “As a matter of constitutional law the UK Parliament has unlimited power to legislate for the Territories.”⁴⁹ In these territories the UK government appoints key government officials and laws in the territories must be approved in London.

In addition it is London-listed companies (Glencore and, at the time, ENRC) that played a critical role in these deals that deprive Congo of its mining revenues. These actions are at loggerheads with the UK's own aid contributions to Congo, which currently stand at around £150 million annually.⁵⁰

The UK has led the way in making company ownership within its own borders more transparent, but it has



Photo: Jorge Brazil, <http://bit.ly/1pV0T7Z>

Tortola in the British Virgin Islands (BVI). Several of Dan Gertler's companies have been incorporated in the BVI, which is a tax haven and secrecy provider.

GERTLER'S PUBLIC RELATIONS CAMPAIGN

Since the scandal over the secret sales broke, Dan Gertler and his companies have attempted to present a more transparent public image. Via his holding company, Fleurette, Gertler hired London-based public relations consultants Maitland to deal with journalists' queries. Maitland has gone to great lengths to reimagine Gertler as a philanthropist, promoting community projects that are supported by the Gertler Family Foundation. More recently Gertler has also been represented by Conservative Lord Mancroft, one of 90 hereditary peers to remain in the UK's House of Lords.⁵¹

In response to questions from Global Witness about these deals, Lord Mancroft said that Gertler and his companies have described our allegations as "false and unsubstantiated". He said that Gertler and his companies had "helped to drive economic growth [in Congo] by bringing in other major investors." Gertler himself even told Bloomberg News, "I should get a Nobel Prize".⁵²

In January 2014 Fleurette signed up to the Extractive Industries Transparency Initiative (EITI), "a global standard to promote open and accountable management of natural resources." The EITI is a global standard that promotes transparency in tax payments and receipts in mining, oil and gas sectors. Countries implementing the EITI disclose information on tax payments, licences, contracts,

production and other key elements around resource extraction. In 2013, in response to calls for greater transparency over company ownership, the EITI launched a pilot project in 11 countries, including Congo, that seeks to reveal the real owners of the companies active in the extractives sectors. In February 2016, the EITI International Board agreed by 2020 oil, gas and mining companies in all 51 EITI countries will have to disclose their real owners.

On its website, the EITI has printed Fleurette's statement of support which says that Fleurette "fully supports" the EITI and that it "believes in the principles that promote good tax governance, accountability, and transparency".⁵³ In a press release on 24 March 2014 Fleurette said it "will support the government to bring in a regime where disclosure of beneficial ownership is compulsory."⁵⁴ In 2015 Fleurette made a voluntary contribution of \$20,000 to the international management of the EITI.

This all sounds laudable and like a step in the right direction. However Congo's most recent EITI reports do not include beneficial ownership details of various companies⁵⁵ associated with Gertler; there is for example no ownership information for the four companies that make up the Highwind Group. Gertler's representative says that Fleurette "has made all disclosures required" to the EITI.

stopped short of requiring its Overseas Territories to do the same. In October 2013 Prime Minister David Cameron said that the UK would make the details of who owns and controls UK companies publicly accessible, however this would not apply to the Overseas Territories.⁵⁶ In September 2015 Cameron criticised some of the UK's Overseas Territories⁵⁷ for not doing enough to combat money laundering and tax evasion.

Cameron is hosting an Anti-Corruption Summit in London in May 2016. He should take this opportunity to turn his words into actions and deal with the secrecy regulations in the UK's own constitutional backyard. He must broker an agreement with the UK's tax havens to shine a light on company owners; anything less must be counted as a failure of leadership.

A NEW ERA OF SECRET SALES?

It is important to revisit the story of these deals in light of Congo's forthcoming election. It could be momentous for the country and might bring about its first peaceful transition of power since independence in 1960. However it could also trigger widespread violence and rioting. The Congolese constitution limits presidents to two terms, so in principle Kabila must step aside. However opponents fear that the president is seeking to change the constitution so that he can run again or, at the very least, significantly delay the next elections so that he can stay in power – a strategy known in Congo as *glissement*.

Should the election be delayed or the constitution changed it is highly likely that opponents of President Kabila will voice their anger in the streets. Protests and demonstrations may turn violent and even deadly, as they did in January 2015 when 40 people were killed during protests in the capital Kinshasa against a perceived attempt to modify election laws.⁵⁸

Changing the constitution or delaying the election will probably require winning the backing of some of Congo's political opposition – and this will require money. If the elections of 2006 and 2011 are an accurate indicator, then there is a strong possibility that government officials will seek to build up an election war chest through off-the-books sales of Congo's mining or oil assets.

After a lull since 2012, more secretive mining deals have recently been struck in Congo as Gécamines again started selling off some of its mining assets in 2014 and 2015, increasingly to Chinese investors. For example, in July 2015 the state miner announced a 'strategic cooperation accord' with China Nonferrous Metal Mining Co. (CNMC) which would involve the exploration of five large mining projects, however no details of the agreement have been released.

A Gécamines official told Bloomberg "It's an agreement to cooperate, it's not a contract,"⁵⁹ possibly signalling a new tactic for evading the requirement to publish contracts. Congolese state mining companies have in the past published memorandums of understanding, and the agreement with CNMC should also be made public.⁶⁰

In addition to reported sales to Chinese investors, in June 2015 Bloomberg and Reuters revealed that Glencore and Gertler's Fleurette Group had also bought up a copper mining licence part-owned by the state in an unannounced deal a few months earlier⁶¹ – the full details of that sale remain unpublished, but company documents obtained by Global Witness show that a BVI company was a partial owner of the licence in question.⁶² Who benefitted from the sale is, therefore, a mystery. Global Witness asked Gertler and his representative about the deal before publishing. Their reply did not answer our questions but said that Fleurette's operations in Congo were above board.

There is a very real risk that the limited progress Congo has made will backslide in the run up to the election, if deals such as these are struck without appropriate scrutiny.



Photo: AP Photo/John Bompengo

Anti-government protestors during a January 2015 protest against a new law that could delay 2016 presidential elections in Democratic Republic of Congo.

RECOMMENDATIONS

It is vital that the laws and regulations that hide company owners' identities are reformed. Internal and external pressure is growing on the UK government to compel its Overseas Territories and Crown Dependencies to publish registers of the ultimate owners of companies domiciled in their jurisdictions. However many of those 'secrecy satellites' are fiercely resisting efforts to make them comply with more robust regulations.⁶³

The Panama Papers scandal has shown that there is a public demand for greater transparency in the offshore world of tax havens. David Cameron has said he aspires to see company ownership information in the Overseas Territories eventually made public; the anti-corruption summit in London is his chance to turn these words into concrete policy.⁶⁴

There are also retrospective legal steps that can and must be taken in the wake of the revelations about these mining deals. The UK Serious Fraud Office investigation into ENRC is an important first step, however three years later it has failed to deliver any tangible results. A similar investigation must also be launched into Glencore, which remains a publicly listed company on London's Stock Exchange and whose relationship with Dan Gertler is worthy of further investigation. The investigations should uncover the identities of the beneficial owners of the BVI companies at the time of the deals.

Then there is Gertler himself. He is still a business partner of Glencore in Congo and owns significant oil and mining assets. He remains close to President Kabila. Thus far he and his private companies have evaded any formal direct investigation by law enforcement or regulatory authorities in Congo, the UK or elsewhere. The evidence that has been released into the public domain by Global Witness, the Africa Progress Panel, journalists and others implicating Gertler in these deals is too compelling to be ignored.

Inside Congo, there is currently a crucial opportunity to strengthen the country's mining law, which is under review. The current mining law dates to 2002, when Congo was emerging from the ravages of the Second Congo War and was in desperate need of foreign investment. The law is, as a result, very favourable towards investors.

The government launched a review of the law in 2012 but the process is ongoing, in part due to private sector

resistance to attempts to hike royalties, increase government stakes in projects and reduce stability clauses. The review process offers a unique opportunity to introduce clauses and language into Congo's domestic law that would help enable its citizens to hold the government to the principles of transparency and good governance⁶⁵ in the mining sector. A draft submitted to parliament in 2015 does have some positive, albeit vague, language on the publication of contracts and disclosure of beneficial ownership.

Worryingly, though, the proposed changes rolled back on even the scant governance provisions in the 2002 legislation, for example removing a crucial conflict of interest provision preventing politicians from owning mining rights.⁶⁶ Were these proposals to become law, politicians with influence over the sale of key mining assets would legally be allowed to own interests in mining companies. The danger of such a situation is clear: corrupt decision-makers could transfer lucrative assets to companies that they are involved with.

The Congolese government's decision to suspend mining law consultations in early 2016 is a worrying development. The overhaul of the mining law is a once-in-a-generation opportunity to improve governance in Congo's most important industry. Any chance Congo has of realising its ambition of becoming an emerging economy will rely on a healthy and profitable mining industry paying monies into the treasury. It must proceed with the revision of its outdated mining law, reintroduce conflict of interest provisions and reinforce articles on transparency and accountability.

Scandalous exploitation of secrecy regulations and co-option of corrupt public figures happens across the world; in this instance we have a wealth of evidence of wrongdoing and yet no concrete action has been taken to improve transparency in tax havens and none of the actors has yet been held to account by regulatory authorities. If the authors of Congo's secret sales scandal can enjoy this level of impunity there is scant hope of fighting corruption on a global scale.

ENDNOTES

- 1 UNEP News Centre, 'UNEP Study Confirms DR Congo's Potential as Environmental Powerhouse but Warns of Critical Threats', 10 October 2011: <http://www.unep.org/newscentre/Default.aspx?DocumentID=2656&ArticleID=8890>
- 2 UNDP, Human Development Index 2015: <http://hdr.undp.org/en/composite/HDI>
- 3 UNICEF, Democratic Republic of Congo: http://www.unicef.org/wcaro/Countries_1749.html
- 4 News24, '7.5 million need humanitarian aid in DRC', 12 January 2016: <http://www.news24.com/Africa/News/75-million-need-humanitarian-aid-in-drc-20160112>
- 5 MONUSCO press release, 'MONUSCO calls on INEC to address electoral observer missions' concerns', 12 December 2011: <http://monusco.unmissions.org/Default.aspx?tabid=10847&ctl=Details&mid=13648&ItemID=13602&language=en-US> also New York Times, 'Congo President Kabila Denies Reports of Election Fraud', 13 December 2011: http://www.nytimes.com/2011/12/13/world/africa/congo-president-kabila-denies-reports-of-election-fraud.html?_r=1&ref=world
- 6 The International Consortium of Investigative Journalists, 'The Panama Papers', 3 April 2016: <https://panamapapers.icij.org/>
- 7 Haaretz, 'Israeli Diamond Tycoons Listed in Leaked Panama Papers', 7 April 2016: <http://www.haaretz.com/israel-news/premium-1.713130?date=1460029627319>
- 8 Global Witness, 'News Over Ownership Of Congolese Oil Blocks Raises Further Corruption Concerns', 29 June 2012: <https://www.globalwitness.org/en-gb/archive/news-over-ownership-congolese-oil-blocks-raises-further-corruption-concerns/>
- 9 David Cameron delivered a statement on the Panama Papers on 11 April 2016, in which he said "today I can tell the House that we have now agreed that they will provide UK law enforcement and tax agencies with full access to information on the beneficial ownership of companies. We have finalised arrangements with all of them except for Anguilla and Guernsey, both of which we believe will follow in the coming days and months. For the first time, UK police and law enforcement agencies will be able to see exactly who really owns and controls every company incorporated in those territories: the Cayman Islands, British Virgin Islands, Bermuda, the Isle of Man, Jersey—the lot.": <https://www.gov.uk/government/speeches/pm-commons-statement-on-panama-papers-11-april-2016>
- 10 Reuters, 'UPDATE 1-Congo copper production to hold steady in 2015 - mines ministry', 15 October 2015: <http://uk.reuters.com/article/congodemocratic-mining-copper-idUKL8N12F2PK20151015>
- 11 BBC, 'DR Congo claims defeat of M23 rebels', 5 November 2013: <http://www.bbc.co.uk/news/world-africa-24815241>
- 12 The Africa Progress Panel report, p. 57, reports that 2012 health and education spending in Congo came to a combined \$698 million: http://app-cdn.acwupload.co.uk/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf
- 13 Reuters, 'UPDATE 1-Congo mining code revision suspended until metal prices recover -minister', 10 March 2016: <http://af.reuters.com/article/drcNews/idAFL5N1615EV>
- 14 The Africa Progress Panel's 2013 report, p.101, estimates that the difference between what Congo received from Gertler's offshore companies for the secret sales mining assets and the market value of the assets and/or what Glencore or ENRC ultimately paid for them is \$1.355 billion. Some of the estimates of market value are conservative, so the figure may be higher. Therefore if the state had sold the assets directly to Glencore or ENRC (or any other company) at market value, instead of at a knockdown price to Gertler's companies, it could have earned at least an extra \$1.36 billion.
- 15 Global Witness, 'Congo Fails To Reveal Loss-making Oil Deal With Controversial Businessman's Offshore Firm', 23 January 2014: <https://www.globalwitness.org/en/archive/congo-fails-reveal-loss-making-oil-deal-controversial-businessmans-offshore-firm/> and Reuters, 'Israeli billionaire sells Congo oil rights for 300 times purchase price', 22 January 2014: <http://www.reuters.com/article/congo-democratic-gertler-idUSL5N0K3WW20140123>
- 16 The Africa Progress Panel's 2013 report, p.101, estimates that these mining deals cost Congo at least \$1.36 billion in lost revenues. Added to the \$149.5 million loss on the Nesserger oil deal, this makes a total loss to the state of approximately \$1.5 billion in these deals involving Dan Gertler and his companies. See: http://app-cdn.acwupload.co.uk/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf
- 17 Forbes, 'The World's Billionaires': <http://www.forbes.com/profile/dan-gertler/> [accessed 22 March 2016]
- 18 Financial Times, 'Annan report blasts ENRC for costing Congo \$725m', 9 May 2013: <http://www.ft.com/cms/s/0/e486f064-b8c0-11e2-869f-00144feabdc0.html#axzz40cd-N8yCG>
- 19 Jason Stearns, 'Dancing in the Glory of Monsters', 2011, p. 321. 'The reason for these rushed and shoddy contracts, diplomats and industry experts indicated, was because of impending elections in 2006. Everybody in the industry I spoke to told me the same thing: Both Gertler and Forrest contributed considerably to Kabila's campaign coffers.'
- 20 In August 2011 Reuters and Bloomberg reported that Sodimico, a state-owned mining company, had sold its share in two copper projects for \$30 million – just six per cent of the estimated value of the stakes, according to analysts – to two companies associated with Gertler in March 2011, and that the proceeds of the sale were used in part to contribute to an election fund. Sodimico's 30 per cent stake in the two mines, Frontier and Lonshi, was sold to two Gertler-linked BVI companies called Sandro Resources Limited and Garetto Holdings Limited, both of which were registered by the same offshore agents that registered two other companies associated with Gertler. A letter dated 19 May 2011 from Sodimico details instructions given by the Congolese government to the company to pay \$10 million to the General Account for the Treasury for the financing of 2011 elections. Reuters reports that Modeste Bahati Lukwebo, the then-head of the audit board of the National Assembly's economic and financial committee, said that Mines Minister Martin Kabwelulu had ordered the sale of the two stakes by Sodimico, adding "[Sodimico] sold it for a price of \$30 million, which was imposed on the CEO of Sodimico...the order was given by the Minister of Mines...It's not [Sodimico's] job [to pay for elections]." Bloomberg reported Sodimico CEO Laurent Lambert Tshisola Kangoa as saying "Sodimico is a state-owned company and it was a political decision to resolve certain problems and re-launch production at Frontier... It was not an economic decision by Sodimico." See Reuters, 'UPDATE 1Congo sells mining assets to fund polls MPs, docs', 18 August 2011 [<http://af.reuters.com/article/commoditiesNews/idAFL5E7J13SK20110818>] and Bloomberg, 'Congolese State Miner Sells Stake in Former First Quantum Mines', 17 August 2011 [<http://www.bloomberg.com/news/articles/2011-08-17/congolese-state-miner-sodimico-sells-stake-in-former-first-quantum-mines>]. See also Africa Progress Panel's 2013 (p.101) report for details of the stakes held and sold on by Sandro resources and Garetto Holdings: http://app-cdn.acwupload.co.uk/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf
- 21 In December 2009 ENRC paid Emerald Star \$25 million for an option to buy 50 per cent of SMKK, but Emerald Star did not purchase Gécamines 50 per cent stake in SMKK until February 2010. Emerald Star paid \$15 million. In June, Emerald Star sold the same stake to ENRC for \$50 million, which was added to the \$10 million profit it made from ENRC's December 2009 loan to make a total profit of \$60 million. The earlier agreement brings the amount ENRC paid Emerald Star to \$75 million for the stake – five times more than the state received for the same asset. Emerald Star had made \$60 million, a 400 per cent profit, over just four months, at the expense of the Congolese treasury had it sold the stake directly. See: https://www.globalwitness.org/documents/10871/global%20witness%20memo%20to%20enrc%20shareholders%2012.6.12_1.pdf

- 2021-1246 (CKK): 0000002991**

- 52 Bloomberg 'Gertler Earns Billions as Mine Deals Leave Congo Poorest', 5 December 2012: <http://www.bloomberg.com/news/articles/2012-12-05/gertler-earns-billions-as-mine-deals-leave-congo-poorest>
- 53 See <https://eiti.org/supporters/companies/fleurette-properties-limited>
- 54 Fleurette press release, 'Fleurette Calls for Open Tender Process in Allocation of Oil Rights in the DRC', 24 March 2014: <http://www.prnewswire.co.uk/news-releases/fleurette-calls-for-open-tender-process-in-allocation-of-oil-rights-in-the-drc-251946551.html>
- 55 The most recent EITI report on Congo is for 2014 (http://media.wix.com/ugd/93b-11d_0ae54e9b18804d278f704f25b57d13c8.pdf). Companies that are or have been associated with Gertler that did not provide any information on the physical person(s) who owned those entities included: Highwind Properties Ltd, Pareas Limited, Interim Holdings Limited, Blue Narcissus Limited and Orama. (pp 128-137)
- 56 UK government press release, 'Public register to boost company transparency', 31 October 2013: <https://www.gov.uk/government/news/public-register-to-boost-company-transparency>
- 57 The Guardian, 'David Cameron says not enough is being done to tackle tax evasion', 30 September 2015: <http://www.theguardian.com/business/2015/sep/30/david-cameron-on-tax-evasion-british-overseas-territories>
- 58 Reuters, 'Church backs Congo protesters, rights group says 42 killed', 21 January 2015: <http://uk.reuters.com/article/us-congodemocratic-politics-protests-idUSKBN0KU0UI20150121>
- 59 Bloomberg, 'Gecamines Congo Signs Mine Deals With Two Chinese Companies', 13 July 2015: <http://www.bloomberg.com/news/articles/2015-07-13/gecamines-signs-congo-deals-with-huayou-cobalt-china-non-ferrous>
- 60 See for example the 7 July 2011 Memorandum of Understanding on the Musoshi Copper Project between Congolese state mining company SODIMICO, Daewoo International and Taejoo Synthesis Steel Co Ltd, published on the Congolese Mines Ministry website: http://mines-rdc.cd/fr/documents/mou_sodimico_taejoo.pdf
- 61 Bloomberg, 'Glencore Unit Buys Congo Copper License in Unannounced Deal', 23 June 2015: <http://www.bloomberg.com/news/articles/2015-06-23/glencore-venture-buys-congo-copper-license-in-unannounced-deal>; Reuters, 'Glencore acquires concession from Congo state miner', 24 June 2015: <http://www.reuters.com/article/congodemocratic-mining-idUSL8N0ZA2ZQ20150624>
- 62 Bloomberg reported that Glencore and Fleurette's Mutanda acquired the Chabara copper company, "a joint venture between Gecamines and local company Dino Steel International, which holds a majority stake... Dino Steel is part of closely held Congolese company Bazano Group." [see Bloomberg, 'Glencore Unit Buys Congo Copper License in Unannounced Deal', 23 June 2015: <http://www.bloomberg.com/news/articles/2015-06-23/glencore-venture-buys-congo-copper-license-in-unannounced-deal>]. The contract between Gecamines and Dino Steel, published on the Congolese mining ministry website, shows that Gecamines held 30 per cent of Chabara and Dino the remaining 70 per cent. Company documents for Dino Steel retrieved in Congo showed that in 2011 (the latest information available) BVI company Greyvale Overseas Limited had a 99 per cent direct interest in Dino. The Journal Officiel de la République Démocratique du Congo also shows details from a 'procès-verbal' for Bazano Group from 2012 where the Group is described as being owned by BVI company Katanga Development Ltd (50 per cent) and Panamanian company Rogerson International Inc (25 per cent), with the remaining 25 per cent split between two individuals (Ngoie Mwepu Jonas and Ilunga Chibind). Rogerson International was dissolved in December 2014, just months before the sale of Chabara to Mutanda, according to the official gazette of Panama. It is unclear whether Katanga Development and Rogerson International continued to hold 50 and 25 per cent (respectively) of Bazano up to Rogerson being dissolved. Given this complexity and opacity, it is impossible to know who the ultimate beneficiaries of the sale of Chabara were.
- 63 Financial Times, 'Tax havens told to drop opposition to UK call for central register', 27 March 2015: <http://www.ft.com/cms/s/0/57b53cc4-d4af-11e4-8be8-00144feab7de.html>
- 64 David Cameron delivered a statement on the Panama Papers on 11 April 2016, in which he said "Next month we will seek to go further still, using our anti-corruption summit to encourage consensus not just on exchanging information, but on publishing such information and putting it into the public domain, as we are doing in the UK. We want everyone with a stake in fighting corruption—from law enforcement, to civil society and the media—to be able to use those data and help us to root out and deter wrongdoing.": <https://www.gov.uk/government/speeches/pm-commons-statement-on-panama-papers-11-april-2016>
- 65 'Global Witness's recommendations for Democratic Republic of Congo's new mining law', October 2015: https://www.globalwitness.org/documents/18091/GW_DRC_mining_code_analysis_-_15.10.15.pdf
- 66 Global Witness, 'Democratic Republic of Congo plans to water down laws against mining corruption', 15 October 2015: <https://www.globalwitness.org/en-gb/press-releases/democratic-republic-congo-plans-water-down-laws-against-mining-corruption/>

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Congo fails to reveal loss-making oil deal with controversial businessman's offshore firm

The Democratic Republic of Congo has struck a deal to buy back oil rights from a secretive offshore company for a sum likely to be hundreds of times the price the company paid several years earlier. The contract for the latest sale has not been published, in contravention of the country's transparency laws.

The revelations come as Congo's parliament is considering a new oil law that could help to prevent future corruption by including strong transparency measures. The most recent draft seen by Global Witness, from 10 January, now provides for obligatory tenders for the granting of almost all future oil rights – a measure that, if implemented transparently, could allow Congo to benefit more from the sector. However, corruption risks continue to be high as long as the law fails to include other safeguards, such as the disclosure of the ultimate owners of oil rights.

The offshore company in question, Nesserger Limited, is majority-owned by Dan Gertler,

a businessman who is friends with the Congolese President and owner of large mining and oil interests in the country. The Nesserger oil deal shares many similarities with a string of secret deals in Congo's mining sector, where mining rights were bought by offshore companies at well below commercial estimates and then "flipped" to major mining firms at a vast profit. Kofi Annan's Africa Progress Panel estimates that the Congolese government lost out on at least \$1.36 billion in five such deals involving Gertler companies between 2010 and 2012.¹ Global Witness raised concerns over these mining deals in public statements last year, calling them "potentially corrupt".

Gertler has denied any impropriety in his Congo deals and said that Nesserger's involvement in Congo's oil sector was of benefit to the country. As this briefing was going to press, Dan Gertler's holding company Fleurette published a statement, [which can be viewed here](#).



Photo: Shutterstock.com/Brazil2



Photo: GCI/EP

Congo and Angola sign agreement to buy Nessergy in Angola in October 2012. Nessergy also signed.

Under the Nessergy deal, the Congolese and Angolan state oil companies bought Nessergy and, with it, its rights in oil-rich waters shared by the two countries. The Congolese government has failed to publish the contract within 60 days, as stipulated by Congolese law. Nessergy's ownership is structured via tax havens, allowing the company to keep its full list of shareholders secret. The ultimate beneficiaries of this huge windfall are thus unknown.

Nessergy was registered in Gibraltar in late September 2006 and just over two weeks later signed a contract for \$500,000 for the oil rights.² That deal was signed between the first and second rounds of Congo's presidential elections, without a competitive tender.³

"The Congolese government has failed to publish the contract within 60 days, as stipulated by Congolese law."

A 2009 US diplomatic cable cites "an embassy contact with good access to the presidency" speaking about a "corrupt oil deal" in the shared waters, reportedly arranged by Katumba Mwanke, who was then close to President Joseph Kabila and regarded as one of the most powerful people in the country. "Katumba reportedly facilitated the sale of a number of Congolese oil blocks, which Luanda believed belonged to Angola," the cable said. "Compounding the issue, Katumba then sold the blocks to friends, including Israeli businessman Dan Gertler, who have no capacity to exploit the fields. They rather plan to sell their concessions to major oil companies."⁴

Asked to comment on this cable, a spokesman for Gertler, Lior Chorev said: "We wouldn't comment on the content of a leaked US diplomatic cable specifically... We will say however that there is no corruption whatsoever in these, or other transactions in which the Fleurette Group has been involved." He added that the process by which Nessergy obtained its rights was the same as for other oil rights granted in Congo up to that time, "by way of direct negotiations between Cohydro/DRC and the new license-holder" (Cohydro is Congo's state oil company).

Contract for nearly 400 times the purchase price

Chorev refused to disclose the sale price of the oilfield under the 2012 deal, citing confidentiality restrictions.⁵ Global Witness has obtained a copy of a separate, abortive contract to buy Nessergy's rights for \$194 million, or almost 400 times the purchase price, which was signed, but not concluded, in 2008.⁶ The eventual 2012 sale price could have been for a similar amount, or possibly higher given that oil prices more than doubled between the failed H Oil deal and the final 2012 sale.⁷ An alternative price for the 2012 deal of \$150 million has been published in a Congolese news magazine – although significantly lower than the \$194 million under the H Oil deal, this would still have been 300 times the amount Nessergy paid in 2006.⁸

Chorev said that the net present value of the area in which Nessergy held rights has been estimated at between \$1.3 billion and \$3.6 billion.⁹

The oil rights, which make up half the "Common Interest Zone" or ZIC, lie in an area that has been the subject of border disputes between Congo and Angola.

"Congo has abundant natural resources but mismanagement and corruption have resulted in limited benefits to the country's 65 million people, who earn just \$415 a year on average."

The countries' two national oil companies are still negotiating the development of the ZIC, which is to be owned by them equally.¹⁰ It "may enter oil production within 36 months", Crispin Atama, the Congolese Oil Minister said in April 2013.¹¹ The subsequent agreement would allow Congo "to more than double its oil production in a few years", according to Chorev.

Chorev confirmed the sale of Nesserger in an e-mail to Global Witness last year, saying that Sonangol, the Angolan national oil company, has agreed to pay for the rights in the first instance. However, Congo will eventually reimburse Sonangol from revenues from the block's oil production, according to Congo's oil minister.¹² The agreement was signed by representatives of Nesserger, Sonangol and the Congolese and Angolan governments in Luanda in October 2012.¹³ "Congo should respect its own laws and publish the full contract for the sale of Nesserger," said Daniel Balint-Kurti of Global Witness. "The full list of Nesserger's shareholders and any other beneficiaries should also be published. Without transparency over this deal, fears will remain of corruption surrounding Congo's potentially most productive oil block."

Congo has abundant natural resources but mismanagement and corruption have resulted in limited benefits to the country's 65 million people, who earn just \$415 a year on average – the lowest per capita income in the world. With official data showing that the Congolese state's oil revenues are rising – \$325 million in 2010 to \$466 million in 2011 – it is vital that this income is harnessed to fight poverty.¹⁴

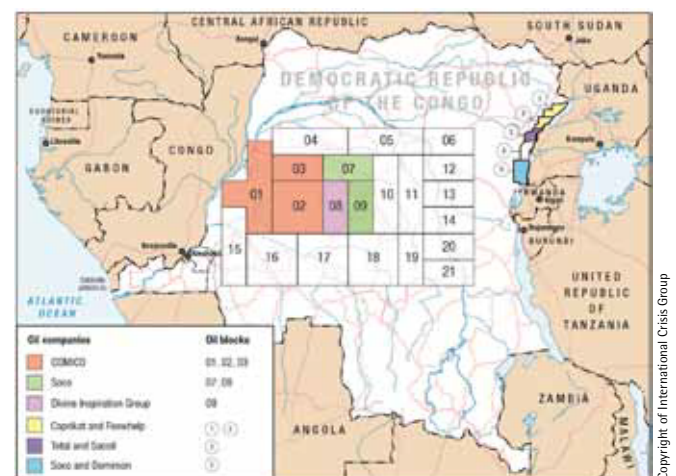
Congolese Oil Minister Atama said in April 2013 that "all requests for the full publication of this accord are both premature and without foundation" as important conditions of the deal had not been concluded. He said that once these conditions are finalised all necessary information will be made available to the public.

Atama's statement said that Congo and Angola's state oil companies were to set up a joint company holding rights to the ZIC, which would be owned by them equally and from which each would receive half the future oil revenues. This would "open the way for 'super Majors' of the oil industry" to be given rights in the zone, he said.

Flipping

Global Witness has repeatedly expressed concern about corruption risks around many of Gertler's business deals in Congo, one of the poorest countries in the world. In particular, we are concerned that he may have got preferential access to assets at extremely low prices before reselling – or "flipping" – them at a vast profit. Gertler's companies conduct their business in accordance with all applicable law, said his spokesman Chorev, adding that "we vigorously contest the misleading claim" made in the Africa Progress Panel report.

It appears, however, that Gertler has again obtained a Congolese asset cheaply in a non-competitive process and this time sold it back for a vast profit. In this deal, Nesserger bought the asset for \$500,000 and may have sold it back for hundreds times more – at anywhere from \$150 million upwards. This comparison does not take into account the money spent by Nesserger in taxes or in developing the field. Chorev would not disclose how much Nesserger had spent exploring the fields, saying only that it was a "considerable sum".¹⁵



A map of Congo's on-shore oil blocks. Nesserger's block lies offshore in the Atlantic Ocean. From International Crisis Group's "Black Gold in the Congo", July 2012.

Chorev rejected suggestions that Nessergy was only interested in flipping the oil rights for a vast profit, saying that "Nessergy has been instrumental in creating substantial potential value for the people of the DRC".

The production sharing contract signed by Nessergy in 2006 engages it to "invest at least \$12 million" in exploration works.¹⁶ A US diplomatic cable from 2006 cited a source who suggested that "the company has a motive other than actually exploring" as "the sum it [Nessergy] proposed to spend for deep-sea exploration, \$12 million, would be inadequate to perform the task".¹⁷

Other fees were paid, as per the contract, "for tax, professional contributions to national gas and oil work" and training, said Chorev. While he would not disclose how much extra was paid, EITI (Extractive Industries Transparency Initiative) reports show that Nessergy paid \$11,376 to tax authorities and \$300,000 to the oil ministry in 2010 and 2011. Data for other years is unavailable.¹⁸ These sums are small compared to the apparent huge profit from the deal.

Another of Gertler's companies, Oil of DR Congo, also controls oil blocks 1 and 2 on Congo's Lake Albert. He is reportedly seeking partners to develop these fields.¹⁹

While the exact boundaries of the ZIC have not been disclosed, the signature bonuses paid for oil blocks in the surrounding Angolan waters suggests that the \$500,000 signature bonus was a bargain, even if it was in line with other bonuses paid to the Congolese government at the time. The ZIC is known to lie near Angola's four "golden blocks" where, according to analysts Wood Mackenzie, oil majors including Chevron, Exxon and BP have discovered proven resources of around 10 billion barrels since drilling began in 1994. In a 2005-06 licensing round signature bonuses for these blocks ranged from \$900 million to \$1.1 billion.²⁰

Nessergy's obscure offshore ownership

Global Witness research shows that Nessergy is owned by offshore companies registered in the British Overseas Territories of the British Virgin Islands (BVI) and Gibraltar. Company ownership is a secret in the BVI. In Gibraltar, as in other countries,

THE MYSTERIOUS OTHER 25%

While companies related to Gertler hold 75% of Nessergy, the remaining 25% belongs to Indus Trading Limited, which was set up by Finsbury Trust, a Gibraltar company services provider.²³ It appears that these investors were kept in the dark about the deal. In response to questions from Global Witness, Finsbury Trust said in an e-mailed statement in April 2013 that: "For the past several years the major shareholder in Nessergy (Fleurette Properties Limited through subsidiaries) and the directors of Nessergy have been withholding information regarding Nessergy from Indus Trading Limited. Consequently, Indus Trading Limited has no information whatsoever with respect to the transaction".

A 2008 article in the newsletter *Africa Energy Intelligence* says that the British-based property investors Moises and Mendi Gertner invested in Nessergy alongside Gertler – it thus seems likely that they were behind Indus Trading.²⁴ Contacted by Global Witness, Mendi Gertner said he could not comment, as he was bound by confidentiality. *Haartez* newspaper reported in 2013 that the Gertner brothers were in an arbitration process with Gertler, who they claim "wrongfully took hundreds of millions of shekels [tens of millions of pounds] from them".²⁵

Global Witness asked Chorev whether the Gertner brothers were indeed the owners of the other 25% of Nessergy. He said that he could not comment on the investor's identity due to confidentiality but could confirm that the owner of the 25% stake is "unrelated to the DRC or any Congolese people or entities or any other politically exposed person from anywhere". Global Witness also asked Chorev whether the investor received a share of the 2012 sales price. He declined to answer, saying that the matter was an "internal company" issue and of no public interest.

Company ownership chart for Nesserger Ltd

No information on the ultimate owners of these companies is available from BVI Companies House. A spokesperson for Gertler says that they belong to the Fleurette Group and "thus for the benefit of the Dan Gerter family"

No information on the ultimate owners of Indus Trading is available. A spokesman for Gertler says that these shares are "held by Fleurette investors". A press report says that Moises and Mendi Gertner have invested in Nesserger.

Lelia Investments Ltd - 100% BVI

Registered address:
PO Box 438, used by
Equity Trust (now TMF
Group)

Finsbury Nominees Ltd- 50% Gibraltar

Registered
address: Finsbury
Trust

Finsbury Holdings Ltd - 50% Gibraltar

Registered
address:
Finsbury Trust

SUF Resources Ltd - 25% Gibraltar

Registered
address: Hassans
law firm

Waterway Enterprises Ltd - 50% BVI

Registered address:
PO Box 438, used by
Equity Trust (now TMF
Group)

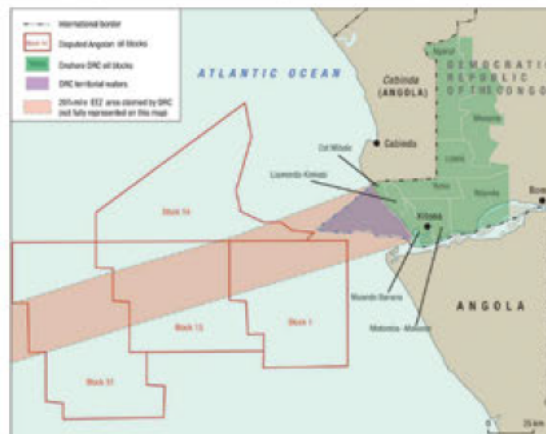
INDUS Trading Ltd - 25% Gibraltar

Registered
address: Finsbury
Trust

COHYDRO (DR Congo state oil company) - 5%*

Nesserger Ltd - 95%* Gibraltar

Registered
address:
Hassans law firm



The oil rights held by Nesserger are located within an offshore area shared by Angola and Congo called the ZIC (Zone of Common Interest). The ZIC lies within the area mapped out above. However, its precise location is not publicly known, as there is no publicly available map of the zone or Nesserger's oil rights.
(map copyright International Crisis Group)

* according to press reports. All other information from official documents from Gibraltar Companies House. Information correct as of 9 April 2013. Created by Global Witness. For more information see www.globalwitness.org



Photo: Stockphoto.com/Brazil2

while the immediate ownership of companies is disclosed in publicly available corporate filings, ownership higher up the chain is not. Such secrecy can help to facilitate corruption by obscuring the ultimate owners or beneficiaries of companies.

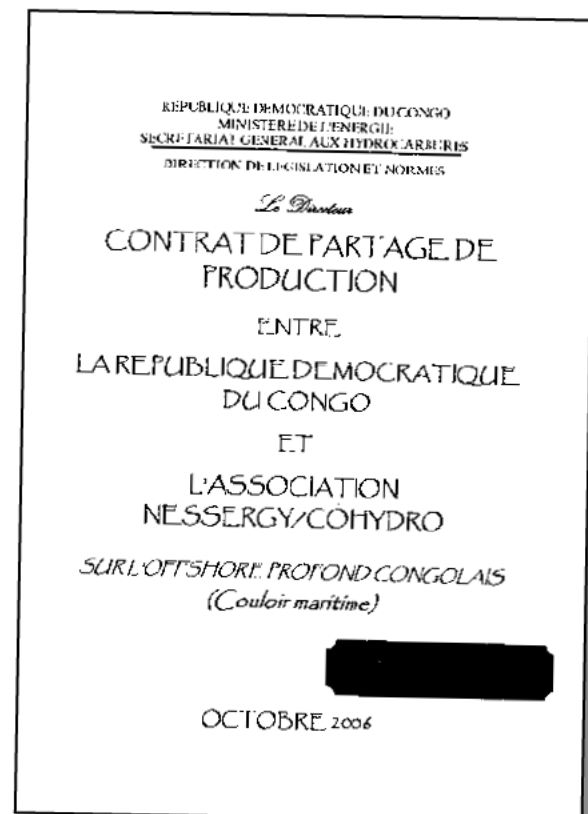
"Nessergy is owned by offshore companies registered in the British Overseas Territories of the British Virgin Islands and Gibraltar."

Global Witness has mapped out the ownership structure of Nessergy (see Nessergy ownership chart). 75% of Nessergy is owned by two BVI companies set up by lawyers and company service providers with an established relationship with Gertler: Hassans law firm in Gibraltar and Equity Trust, now part of the company service provider TMF Group based in the Netherlands.²¹ The other 25% of Nessergy is owned by "Fleurette investors", according to Chorev.

Hassans and Equity Trust have provided services for many of Gertler's deals in Congo.²² Global Witness wrote to TMF Group and Hassans, putting it to them

that "service providers that helped establish the companies related to the deal could...bear some part of responsibility for any malpractice". We also asked them whether the secrecy surrounding Nessergy's ownership could have facilitated corruption. TMF Group said "we are not able to comment on individual organisations or operations". Hassans threatened legal action and said that our statements were "untrue, defamatory and strenuously denied in all aspects". It defended the use of offshore companies as "common practice in the commercial world" and said that Global Witness's approach was based on "unsubstantiated, unproven and unworthy allegations". Gertler's spokesman Chorev said: "For clarity and for the avoidance of doubt, no DRC politician, official or authorities have any right, legal or beneficial interest in Nessergy whatsoever."

Nessergy also appears to be in default of Gibraltar rules related to filing of company accounts. Gibraltar law says that company accounts must be filed within 13 months of the relevant financial year-end.²⁶ At the time of publication, Nessergy's most recent accounts filed with Gibraltar Companies House run only to the end of 2009.



Congo and Nessergy agreed a deal for oil rights off the Atlantic Coast in 2006.

H OIL AND THE DEAL THAT DIDN'T HAPPEN

Global Witness has seen a contract for the purchase of Nesserger by H Oil Group from 18 November 2008. The agreement was signed by the President of H Oil, Jacques Hachuel (one of the founders of Marc Rich & Co, which later became Glencore), and Hassans staff on behalf of Nesserger shareholders. That sale did not take place, however. Hachuel said in a later letter to Congo's oil minister that border disputes with Angola were the chief reason for the deal being called off.

According to the contract, H Oil would make further payments of up to \$44 million, in addition to the initial payment of \$194 million, should final reserves top 180 million barrels. In a July 2012 letter to Congo's oil minister seen by Global Witness, Hachuel, who was advising Sonangol, complained of a "blocking of dialogue" with Nesserger after having made an offer that was "virtually impossible to refuse".³⁰

A representative for H Oil contacted by Global Witness denied knowledge of the 2008 contract. Gertler's spokesman, Lior Chorev, said the failed deal "is not a matter of public concern and reflects negotiations between private parties".

On the same day that the abortive contract between H Oil and Nesserger was signed, 50% of Nesserger (owned by Gertler-linked Waterway Enterprises – see chart) was temporarily transferred to a Cayman Islands company, Cinquegoya Limited.³¹ It is not known why this transfer took place and why the shares were transferred back to Waterway two years later.³² However, it seems that whoever owned Cinquegoya originally expected to receive part of the \$194 million that H Oil was due to pay, in return for financing. The Cayman Islands Register gives no information on company owners. Chorev said that the ultimate owner of Cinquegoya is "a well-known financial institution in the UK" which held the shares as a "financial security". He added that "no Congolese person or entity, or any politically exposed person from anywhere has or had any involvement with Cinquegoya".

The company's 2010 and 2011 accounts are thus overdue (the deadline for Nesserger's 2012 accounts is the end of January 2014).²⁷ Chorev said that this may be an "administrative oversight".

Changing the rules to end corporate secrecy

Congo is currently drafting a law to regulate the oil sector. The latest draft of the bill, being debated in parliament, fails to include measures to prevent corruption and environmental damage. The International Monetary Fund told *The Independent* that, "it is important not to make the same mistakes made with the mining sector," to ensure that a fair share of oil revenues should go to the Congolese people.²⁸

"The new oil law should include publication of contracts, transparency over who owns oil rights and make open tenders obligatory to avoid a repeat of the secret sales that have deprived Congo of

huge amounts of revenue," said Balint-Kurti of Global Witness.

Governments around the world are beginning to take action against corporate secrecy. In October 2013, the UK announced it would create a central, public register of the real, or "beneficial", ownership of UK companies. The same month, the government of the British Virgin Islands launched a consultation on whether to create a central register of beneficial ownership, including the question of whether this should be public.²⁹

The EITI is beginning to tackle this issue by piloting the voluntary publication of beneficial owners of companies with extractive contracts, ahead of making this a mandatory requirement in 2016. Congo is currently suspended from the EITI, pending a decision by the EITI board in April 2014. It is, however, one of the countries that will pilot beneficial ownership disclosure.

Chronology

- **July 2003** – official end of the Second Congo War, in which Angola supported Laurent-Désiré Kabila and Joseph Kabila (the current President of Congo).
- **August 2003** – first Memorandum of Understanding signed between Congo and Angola related to offshore oil, which is already being drilled by Angola.
- **17 May 2006** – ENI announces it has won competition for a 35% stake in Angola's Block 15, including areas claimed by Congo. ENI pays a signature bonus of \$902 million.
- **30 July 2006** – first round of Presidential elections in Congo.
- **21 September 2006** – Nesserger Ltd, associated with Dan Gertler, registered in Gibraltar.³⁴
- **7 October 2006** – deal for rights to oilfields off Congo's Atlantic coast agreed between Congolese authorities and Nesserger.
- **20 October 2006** – US diplomatic cable cites a Congolese government official saying the Nesserger deal was "bizarre" and that "he thinks the company has a motive other than actually exploring, because the sum it proposed to spend for deep-sea exploration, \$12 million, would be inadequate to perform the task".
- **26 October 2006** – Nesserger pays signature bonus of \$500,000 for oil rights.
- **29 October 2006** – Second round of Presidential elections in Congo, of which Joseph Kabila is ultimately declared victor.
- **November 2007** – Common Interest Zone (ZIC) approved by Congo.
- **12 March 2008** – Nesserger production sharing contract approved by presidential order³⁵
- **18 November 2008** – Contract signed between H Oil and "shareholders of Nesserger Ltd". H Oil agrees to an initial payment of \$194 million for 100% of Nesserger's shares. The sale did not go ahead. On the same day, 50% of Nesserger shares are transferred to an opaque offshore company, Cinquegoia Ltd, Cayman Islands.
- **May 2009** – Angola makes submission to the UN Commission on the Limits of the Continental Shelf. Congo responds formally on 14 June 2010 complaining that Angola's plan "delimits the continental shelf of that country without reference to the rights of" Congo.³⁶
- **August to October 2009** – tit-for-tat reciprocal expulsions of an estimated 50,000 Congolese and Angolans, linked to tensions over oil and artisanal diamond miners.
- **15 December 2009** – Citing a contact, a US diplomatic cable from Kinshasa refers to a "corrupt oil deal" which "infuriated" Angola. It says concessions were sold to people "including Israeli businessman Dan Gertler, who have no capacity to exploit the fields. They rather plan to sell their concessions to major oil companies." Asked about this by Global Witness, a spokesman for Gertler declined to comment on the cable but said "there is no corruption whatsoever in these, or other transactions in which the Fleurette Group [Gertler's holding company] has been involved".
- **20 May 2011** – Congolese Prime Minister signs a decree requiring publication of all natural resource contracts within 60 days.
- **9 April 2012** – Nesserger contract extended according to Africa Energy Intelligence, nine days before the appointment of a new Prime Minister and Cabinet.³⁷
- **25 October 2012** – Congolese and Angolan governments, with Sonangol, sign agreement to purchase Nesserger. The agreement is also signed by Nesserger. Announced on the Sonangol website on 12 November 2012.
- **November 2012** – IMF halts its loan programme to Congo, citing non-publication of the details of a June 2011 mining contract involving a Gertler-linked company.
- **29 January 2013** – Congolese Oil Minister told Bloomberg that negotiations for the sale of Nesserger were "far advanced" without mentioning the agreement.
- **23 April 2013** – Press statement from Congo's Oil Minister confirming agreement to buy Nesserger, but saying calls to publish the contract are "premature and without foundation".
- **8 November 2013** – new oil law formally introduced to Congo's National Assembly (lower house of parliament)
- **13 January 2014** – debate on the oil law begins in an extraordinary session of the National Assembly

Notes to editors:

- Global Witness was unable to confirm the ultimate beneficial owners of Nesserger, due to secrecy over company ownership. Gertler's spokesman said in a July 2013 e-mail that "Nesserger is a Fleurette entity, thus for the benefit of the Dan Gertler family." Another representative for Gertler has also told Global Witness that Fleurette "has no beneficial owners other than the Gertler Family Trust". Dan Gertler's representatives have offered to commission a partial audit of Fleurette's ownership to confirm this and Global Witness looks forward to seeing the results. The representatives offered Global Witness the possibility of participating in the audit, which was not possible due to a difference of opinion on the scope and on whether it would be made public in full.
- The response from Hassans can be found on our website.
- The Prime Minister signed a decree (No. 011/26) on 20 May 2011 "concerning the obligation to publish all contracts focusing on natural resources" (*portant obligation de publier tout contrat ayant pour objet les ressources naturelles*). It states that any contract related to natural resources, and to which the state is a party, should be published by the relevant ministry within 60 days of its entry into force. The full text is available here: <http://www.congomines.org/wp-content/uploads/2011/10/GOVRDC-2011-DecretPublicationContrats.pdf>.
- See Global Witness publications on Congo's draft oil law, notably: "Oil law before Congo parliament fails to safeguard against corruption or environmental damage – Global Witness" from 9 May 2013 (<http://www.globalwitness.org/library/oil-law-congo-parliament-fails-safeguard-against-corruption-or-environmental-damage-%E2%80%93-global>)
- As noted in the main text of this report, the exact boundaries of the ZIC have not been disclosed. The main body of the 2006 contract refers only to the "maritime corridor" and annexes to the contract said to include a map and coordinates have not been published. According to the Congolese Oil Minister, the ZIC is also referred to as block 14C (again, for which no map is available). However, Congo claims a much larger area. A study by US-based Trinity Oil & Gas reportedly advised Congo to claim an area overlapping eight Angolan blocks, representing 17.6% of Angola's total proved reserves worth over \$200 billion on the market according to one estimate.³² Congo claims an exclusive economic zone (EEZ) over a much larger area than the ZIC. Congo's claimed EEZ cuts across blocks 14 and 15, which together produce more than 800,000 barrels per day (2011 figures), worth over \$80 million per day on the market.



Photo: iStockphoto.com

"The new oil law should include publication of contracts, transparency over who owns oil rights and make open tenders obligatory."

Endnotes

- 1 Africa Progress Panel, 2013, "Equity in Extractives", http://www.africa-progresspanel.org/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf, p. 56
- 2 Documents from Gibraltar Companies House. See also Nesserger production sharing contract of October 2006: http://mines-rdc.cd/fr/documents/Hydro/contrat_rdc_nesserger_cohydro.pdf
- 3 E-mail from Lior Chorev, 19 January 2014: "Regarding your question 1, there was no tender process for the grant of the Nesserger license. As previously explained, the process for the grant of the Nesserger license was the same as for ALL oil block licenses previously granted by DRC, including others granted around the same time as Nesserger – ie. by way of direct negotiations between Cohydro/DRC and the new license-holder."
- 4 US diplomatic cable from Kinshasa, "Dongo, Katumba's resignation, and Angola – any connection?", 15 December 2009 (<http://wikileaks.org/cable/2009/12/09KINSHASA1084.html>, last accessed 21 January 2014). The full passage reads: "According to our contact... Katumba reportedly facilitated the sale of a number of Congolese oil blocks, which Luanda believed belonged to Angola. Compounding the issue, Katumba then sold the blocks to friends, including Israeli businessman Dan Gertler, who have no capacity to exploit the fields. They rather plan to sell their concessions to major oil companies."
- 5 In an e-mail of 25 July 2013 to Global Witness, Chorev wrote: "Nesserger cannot disclose specific and sensitive information since it is bound by the confidentiality restrictions in the agreement with Sonangol." It should be noted that while Chorev has queried how Global Witness can speak about a sale price for the deal, saying that the "deal is still pending" and that it is therefore "too early to be commenting on pending compensation", he has also acknowledged that Nesserger has received payment under the deal: "While this transaction is still progressing, Nesserger has received a fee to compensate it for its willingness to return the license and for the loss of proven opportunities in a large oil reserve. In the event the transaction is not completed, Nesserger will be required to return the fee."
- 6 H Oil & Minerals Ltd and Shareholders of Nesserger Ltd, 18 November 2008, "Heads of terms for the sale and purchase of Nesserger Ltd and for the creation of a joint-venture".
- 7 Spot prices for Brent crude: 7 October 2006 (when first Nesserger deal was signed) – \$56.90/barrel; 18 November 2008 – \$49.10 (H Oil contract was signed on this date. Oil prices had spiked in the previous month and were falling fast at this time); 25 October 2012 (when final sale agreed) – \$107.64. This information comes from the US Energy Information Administration, at <http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&t=RBRT&f=D>.
- 8 Le Soft International, 27 Sept 2013, "Espaces maritimes et souveraineté nationale", Kasongo-Numbi Kashemukunda, p. 8, <http://issuu.com/lesoftonline/docs/journal1246>: "Nesserger, elle, aurait demandé et obtenu une rondelle somme de 150 millions de dollars américains que Sonangol lui aurait remis au nom de Cohydro qui lui le remboursera plus tard quand la ZIC commencera à produire." (Translation: "Nesserger apparently requested and obtained a round sum of \$150 million that Sonangol paid in Cohydro's name, and which Cohydro will later reimburse when the ZIC will begin to produce.")
- 9 Chorev wrote in an e-mail of 5 January 2014: "The DRC will benefit significantly from the rights on the ZIC Area: an NPV [net present value] between US\$1.3 billion and \$3.6 billion is predicted to be generated by the future Joint Operations of Sonangol and Cohydro (DRC state company), along with additional fees (i.e. a signature bonus) that could be paid by any foreign companies operating on the Block. Cohydro will also have the role of the Concessionaire on 50% of the block, which constitutes a valuable and bankable title. This increase in value has been made possible as a direct consequence of Nesserger's role in, amongst others, helping create the agreements concerning the ZIC in the first place."
- 10 In the e-mail of 5 January, Chorev wrote: "As you are fully aware, negotiations between Cohydro and Sonangol are continuing, and thus it was agreed that the transaction has not yet been completed. In the meantime the details of transaction remain subject to a confidentiality agreement and Fleurette is unable to comment further."
- 11 Ministère des Hydrocarbures, 2013, "Déclaration de presse du Ministre des Hydrocarbures de la RDC, Son Excellence Monsieur Crispin Atama Tabe Mogodi", 23 April 2013.
- 12 Also stated in the oil minister's 23 April 2013 release.
- 13 A statement on Sonangol's website says that the agreement to buy Nesserger was signed by the Congolese Oil Minister among others in October 2012. Sonangol's website: "Sonangol E.P. assina acordo de exploração de Hidrocarbonetos na RDC", 12 November 2012; (http://intranet.sonangol.co.ao/container.jsp?viewType=articleView&contentId=SEP_SNL-EP-assina-ContraRDC ; last accessed 12 December 2013). The translation of the statement from Portuguese is: "Sonangol E.P. signed on 25 October 2012 at its headquarters in Luanda an agreement regarding the exploration of hydrocarbons in the deepwater of the Democratic Republic of Congo, embodied by the purchase of the shares of Nesserger Ltd, the company that explores for oil in Angola's neighbouring country. The President of the Board of Directors, Francisco de Lemos Jose Maria, and Director Gaspar Martins initialled the agreement for Sonangol E.P., along with the Congolese Minister of Hydrocarbons His Excellency Atama Tabe Mogodi and the Director of Nesserger Ltd, Oren Lubow, who did so on behalf of the parties they represented. The ceremony was attended by Angola's Secretary of State for Petroleum, Anibal Silva, and members of the Board of Directors of Sonangol E.P." It should be noted that the Portuguese statement refers to the purchase of "das acções da Nesserger Limitada", ("the shares of Nesserger Ltd"), meaning that the agreement was to purchase the company in its entirety. If only some of the shares were bought the phrase would have read "compra da acções".

- 14 See page 30 of the EITI 2010 report and page 6 of the EITI 2011 report on oil.
- 15 E-mail from Chorev, 25 July 2013: "Finally of course, Fleurette has invested a considerable sum in studying the blocks, the acquisition of seismic data, exploration, development etc."
- 16 Nesserger production sharing contract, October 2006, p. 16: http://mines-rdc.cd/fr/documents/Hydro/contrat_rdc_nesserger_cohydro.pdf
- 17 US diplomatic cable from Kinshasa, 20 October 2006, 'Extractive Industries Update': <http://wikileaks.org/cable/2006/10/06KINSHASA1624.html>
- 18 See DRC EITI report 2010 (http://eiti.org/files/Congo-DRC-2010-EITI-Report-ENG_0.pdf); and DRC EITI "Hydrocarbures" report 2011 (http://www.itierdc.com/Publication_et_rapport/Rapport%20ITIE%202011%20Hydrocarbures%20%20vf.pdf) .
- 19 See Global Witness statement from 29 June 2012, "News over ownership of Congolese oil blocks raises further corruption concerns", <http://www.globalwitness.org/library/news-over-ownership-congolese-oil-blocks-raises-further-corruption-concerns>. Oil of DR Congo is owned by Gertler-linked companies Caprikat and Foxwhelp: see the brief entry for Oil of DR Congo for Congo's 2013 iPAD oil conference, which says, "Oil of DR Congo on behalf of its shareholders Caprikat and Foxwhelp has the exclusive right to exploration on Block I and II of the Albertine Graben for a period of 5 years" (emphasis ours). Regarding plans to sell blocks I and II on see, for example, Africa Energy Intelligence, 1/10/13: "Caprikat/Foxwhelp seek to shine" and Howzit MSN News, 22/4/13, "Zuma nephew in talks for oil deal" (<http://news.howzit.msn.com/zuma-nephew-in-talks-for-oil-deal>).
- 20 Wood Mackenzie, 2009, "A golden decade for Angola's deepwater", 1/12/2009, <http://www.offshore-mag.com/articles/print/volume-69/issue-12/west-africa/a-golden-decade-for.html>
- 21 TMF Group, 2011, "Merger Creates a Global Compliance and Reporting Firm", press release 6 July 2011 says, "A world leader in corporate compliance and reporting services has been created, following the merger of TMF Group and Equity Trust", <http://www.prnewswire.com/news-releases/merger-creates-a-global-compliance-and-reporting-firm-125064124.html>. Regarding the companies owning 75% of Nesserger: Companies House Gibraltar, "Voluntary Return of Members" for Nesserger from 9 December 2010 (most recent available) shows that 1,000 of the company's 2,000 shares are owned by Waterway Enterprises Limited registered in the British Virgin Islands and that another 500 of Nesserger's shares are owned by Suf Resources Limited registered in Gibraltar. Suf Resources Limited is itself 100% owned by Lelia Investments Limited registered in the British Virgin Islands according to the company profile of Suf Resources from Companies House Gibraltar obtained by Global Witness on 10 April 2013. See Nesserger ownership chart by Global Witness.
- 22 See for example British MP Eric Joyce's "List of Offshore Companies Dealing in DRC Assets" from November 2011, http://ericjoyce.co.uk/wp-content/uploads/2011/11/drc_shell_companies.pdf
- 23 Companies House Gibraltar, "Voluntary Return of Members" for Nesserger from 19 September 2008 shows that 500 of the company's 2,000 shares are owned by Indus Trading Limited, registered to Suites 7B & 8B, 50 Town Range, Gibraltar, the registered address of Finsbury Trust Company Limited.
- 24 Africa Energy Intelligence, 2008, "Congo-K: Gertler Finds Partners", N°477, 10 December 2008, <http://www.africaintelligence.com/AEM/oil/2008/12/10/gertler-finds-partners,52811347-ART>
- 25 Haaretz, 2013, "British brothers take on Israeli lawyer in multi-million dollar dispute over African diamonds", 1 July 2013, <http://www.haaretz.com/business/premium-1.533198>
- 26 Article 12, Gibraltar Companies (Accounts) Act, 1999. See: <http://www.companieshouse.gi/publications/C0025.pdf>
- 27 Documents from Gibraltar Companies House, www.companieshouse.gi
- 28 The Independent, 2013, "A murky deal for the Congo", 18 November 2013, <http://www.independent.co.uk/news/world/africa/a-murky-deal-for-the-congo-as-oil-exploration-threatens-corruption-and-environmental-damage--and-londonbased-soco-international-is-first-in-the-queue-8947899.html>
- 29 BVI government, October 2013, "Public consultation paper on beneficial ownership information", <http://www.bvi.gov.vg/sites/default/files/Consultation%20Paper%20on%20Beneficial%20Ownership%20Information.pdf>. For an overview see 'Company ownership: which places are the least transparent?' by Global Witness and Christian Aid, November 2013: http://www.globalwitness.org/sites/default/files/library/GW_CA_Company%20Ownership%20Paper_download2.pdf
- 30 Letter from Jacques Hachuel, President of H Oil Group to Crispin Atama, Congolese Oil Minister on 31 July 2012.
- 31 Companies House Gibraltar, "Annual Return" forms for Nesserger dated 15 September 2009 and 15 September 2011.
- 32 Companies House Gibraltar, Annual Return form for Nesserger, dated 5 January 2012.
- 33 Marysse, Stefaan & Omasombo, Jean, 2013, « Conjonctures congolaises 2012 : Politique, secteur minier et gestion des ressources naturelles en RD Congo », L'Harmattan, p. 151
- 34 <http://www.companieshouse.gi/publications/5SUPP0682.pdf>
- 35 Presidential order 08/022: <http://www.leganet.cd/Legislation/JO/2008/JO.15.03.2008.n.6.pdf>
- 36 http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/cod_ago_re_cod_2010e.pdf
- 37 See Africa Energy Intelligence, 2 May 2012: "Nesserger wins OK in disputed area". The article says Nesserger's rights were renewed on 9 April 2012. Matata Ponyo was appointed Prime Minister on 18 April.

Global Witness is a UK-based non-governmental organisation which investigates the role of natural resources in funding conflict and corruption around the world.

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Brexit

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Charged: The Future of Autos

Future of M

INTEL

JANUARY 22, 2014 / 7:01 PM / 4 YEARS AGO

Israeli billionaire sells Congo oil rights for 300 times purchase price

Reuters Staff



- * Controversial businessman sells asset for 300 times purchase price
- * Congo and Angola to collaborate in development of offshore oil block
- * Company defends deal as beneficial to Congo, campaigners criticise lack of transparency

By Peter Jones

KINSHASA, Jan 23 (Reuters) - Israeli billionaire businessman Dan Gertler sold one of his Congo-based oil companies to the government last year for \$150 million - 300 times the amount paid for the oil rights - in a deal criticised by transparency campaigners.

Gertler, an influential figure in Democratic Republic of Congo's mining and oil sectors with close links to the Kinshasa government, denies any wrongdoing in the sale of Nesserger Ltd, which paid a \$500,000 signing bonus for its block in 2006.

The block lies near some of neighbouring Angola's most productive oilfields. At the time it was acquired by Nesserger, the block was located in an area at the heart of a maritime border dispute between Kinshasa and Luanda.

However, the two countries have since created a zone of common economic interest in an attempt to settle the border row. Last year, Congo sought to buy back the rights from Nesserger to allow it to negotiate a new production sharing agreement with Angolan state oil company, Sonangol.

According to the contract for the April 2013 transaction seen by Reuters, Sonangol financed the deal, paying Gertler's Fleurette Group \$150 million for the rights to the block. Congo will repay Sonangol out of future oil revenue.

Fleurette has been paid the fee but cannot access the money until a deal between the national oil companies of Congo and Angola is finalised.

A Fleurette representative said no major drilling had taken place in the Nesserger block due to disputes over development rights. He said the \$500,000 signing bonus was the standard amount companies paid to Congo for oil rights at the time the contract was agreed.

The company said the value of its rights increased dramatically after oil was discovered on the nearby Menongue field in Angolan waters in 2007.

TARGET OF CRITICISM

Campaign group Global Witness, however, said Nesserger's block was always likely to hold significant oil reserves given its proximity to Angolan discoveries totalling around 10 billion barrels.

"In a 2005-06 licensing round signature bonuses for these blocks ranged from \$900 million to \$1.1 billion," the campaigner said in a statement, referring to the nearby Angolan acreage.

Global Witness also criticised the Congolese government for not publishing the deal within 60 days as required by the law.

Because Nesserger was incorporated in tax havens where owners are not obliged to divulge their identity, it is unclear who owns the minority holding not belonging to Gertler, and therefore who else benefits from the sale, the campaigner said.

"Global Witness is calling for an end to secrecy over beneficial ownership internationally, as an essential step in the fight against corruption," the campaigner said.

Gertler's mining companies have been the target of transparency campaigners in the past. Between 2010 and 2012 they obtained a number properties for sums widely considered to be generous, before selling them on for large profits.

According to the Africa Progress Panel, headed by Kofi Annan, Congo lost out on at least \$1.36 billion in potential tax revenue in five deals with Gertler during this period.

Fleurette however stands by the deals. It said the Panel's criticism failed to "take into account a series of other factors which will impact the value of an asset, or simply state the wrong value of the transaction."

The Gertler-controlled group insisted the Nesserger deal was good for Congo. It said that joint production with Angola will earn the cash-strapped central African nation between \$1.3 billion and \$3.6 billion.

(Writing by Joe Bavier; Editing by Daniel Flynn, editing by David Evans)

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Quicktake

Gertler Earns Billions as Mine Deals Leave Congo Poorest

Franz Wild, Michael J. Kavanagh and Jonathan Ferziger
December 5, 2012, 5:00 PM EST

Dan Gertler's bearded face lights up as he looks out the helicopter window. Below, an installation twice the size of Monaco rises from a clearing in the central African forest, where it transforms ore mined from the ochre earth into sheets of copper.

"Look at it, look at it," the Israeli billionaire, 38, shouts through the headset above the thrum of rotors. "This is what life is all about," Gertler says as the chopper lands in the scorching, dry afternoon heat of the Democratic Republic of Congo.

"Everyone comes with dreams and illusions and promises. Everyone wants quick deals. They don't want to invest. We are real."

Wearing a black suit by French fashion house Zilli, ritual white tassels hanging off both hips and a black-velvet yarmulke, Gertler hops out into the dust of Mutanda, a mine controlled by his partner, Glencore International Plc, that holds cobalt and some of the highest-grade copper in the world, Bloomberg Markets magazine reports in its January issue.

He climbs into an air-conditioned Toyota Land Cruiser to tour the mine, tapping messages into one of his three BlackBerrys, whose batteries, like those of smartphones and laptops everywhere, often depend on cobalt to keep their charge.

Gertler has stakes in companies that control 9.6 percent of world cobalt production, based on U.S. Geological Survey data and company figures.

Diamonds and Gold

That's just the beginning of Gertler's influence in Congo, the largest country of sub-Saharan Africa, with the world's richest deposits of cobalt and major reserves of copper, diamonds, gold, tin and coltan, an ore containing the metal tantalum, which is used in consumer electronics. His Gibraltar-registered Fleurette Properties Ltd. owns stakes in various Congolese mines through at least 60 holding companies in offshore tax havens such as the British Virgin Islands.

Gertler, whose grandfather co-founded Israel's diamond exchange in 1947, arrived in Congo in 1997 seeking rough diamonds. The 23-year-old trader struck a deep friendship with Joseph Kabila, who then headed the Congolese army and today is the nation's president. Since those early days, Gertler has invested in iron ore, gold, cobalt and copper as well as agriculture, oil and banking. In the process, he's built up a net worth of at least \$2.5 billion, according to the Bloomberg Billionaires Index.

Roster of Critics

He's also acquired a roster of critics. Many of the government's deals with Gertler deprive Congo's 68 million people of badly needed funds, according to the London-based anticorruption group Global Witness and lawmakers from Congo and the U.K., the country's second-biggest aid donor after the U.S.

"Dan Gertler is essentially looting Congo at the expense of its people," says Jean Pierre Muteba, the head of a group of nongovernmental organizations that monitor the mining sector in Katanga province, where most of Congo's copper is located.

"He has political connections, so state companies sell him mines for low prices and he sells them on for huge profits. That's how he's become a billionaire."

In the eight months preceding November 2011 elections, in which Kabila won a second five-year term, companies affiliated with Gertler bought shares in five mining ventures from three state-owned firms, according to minutes of board meetings, company filings and documents published later. The state companies didn't announce the sales.

'Lies Are Screaming'

In at least three of the cases, prices paid were below valuations of the projects made by analysts at Deutsche Bank AG, London-based Numis Securities Ltd. and Oriel Securities Ltd. and Atlanta-based consulting firm Golder Associates Inc.

Gertler denies that he purchased companies at below-market rates or that any of his deals have involved kickbacks.

"The lies are screaming to the heavens," he says in his native Hebrew in a June interview, during three days Bloomberg reporters spent with him in Congo and Israel.

He returns from Congo to his home in Bnei Brak, an ultra-Orthodox suburb of Tel Aviv, each week to spend the Sabbath with his wife, Anat, and their nine children.

Congo has a history of making deals out of the public view. The International Monetary Fund this month halted a \$532 million loan program with the country. The IMF said the government didn't adhere to its demand to publish the full details of a 2011 mining deal between a state-owned miner and a company that two people familiar with the matter say is affiliated with Gertler.

Losing Disbursements

Congo will lose out on three loan disbursements worth a total of about \$225 million, according to Oscar Melhado, the IMF's resident representative in Congo.

The Washington-based lender already froze payments to Congo in December 2011, because a lack of transparency made it hard to track whether funds from mineral deals were flowing into state coffers, Antoinette Sayeh, director of the IMF's African Department, said in March 2012.

"Given the significance of natural resources in this economy and the huge impact that natural resources can have, we think it's very important to help DRC improve in terms of its governance," she said.

As the country's mineral wealth is developed, the lot of Congo's people isn't improving. Congo remains the world's most-destitute nation, according to the UN Development Programme's measure of health, education and income. Most of the country lives without electricity or running water, and one in five children dies before his or her fifth birthday. Armed groups continue to destabilize the country.

Election Irregularities

Congo's per capita income of just \$280, in 2005 dollars, is below what it was in 1960, when the country -- formerly called Zaire -- gained independence from Belgium. The World Bank ranks Congo No. 181 out of 185 in its Ease of Doing Business Index for 2013, down from No. 180 a year earlier.

Kabila's re-election was marred by irregularities and violence, according to observers from Congo's Catholic Church and the European Union. Kabila's opponent, Etienne Tshisekedi, contested the 49 percent-to-32 percent vote, charging it was fraudulent. The Congolese Supreme Court ruled it valid.

In August, U.S. Senator Tom Coburn, an Oklahoma Republican, wrote to Meg Lundsager, the U.S. representative to the IMF, demanding better oversight of the loan program in Congo. "Billions of dollars of state assets have been transferred for a fraction of their value to nebulous international firms on the IMF's watch," Coburn wrote in the letter, a copy of which was obtained by Bloomberg News. The U.S. gave \$268.2 million in aid in 2011.

Glencore's Role

Lawmakers from the U.K. are demanding that aid to Congo be slashed because the country can't show that earnings from its mines are benefiting its people.

Global Witness has called on Glencore and FTSE 100 Index-listed Eurasian Natural Resources Corp., two companies involved in the pre-election deals with Gertler, to publish details of the transactions and dispel the anti-corruption group's suspicions that Congolese officials received kickbacks in return for selling assets to Gertler.

"Offering, paying, authorizing, soliciting or accepting bribes is unacceptable to Glencore," company spokesman Charles Watenphul said in an e-mail. ENRC declined to comment.

Gertler says disclosing the deals to the public is the Congolese government's responsibility, not his. "We're a private company. Why should we announce?" he says.

"I should get a Nobel Prize," adds Gertler, who paces around and waves his arms as his demeanor swings between anger and boyish charm during interviews.

"They need people like us, who come and put billions in the ground. Without this, the resources are worth nothing."

'Braved the Hurricane'

The government insists it's following the rules of the IMF agreement, which calls for it to disclose deals for its natural resources. And Kabila, 41, defends Gertler as a man who staked his fortune on Congo at a time when the country was wracked by war and in desperate need of cash.

"The truth is, during our very difficult times, there were investors who came and left and others who braved the hurricane," he said of Gertler in a brief interview at his riverside palace in December 2011. "He's one of those."

The bond between the two men is so strong that Kabila at times uses Gertler as a special diplomatic envoy, including in 2002, when the Israeli businessman met with then-U.S. National Security Adviser Condoleezza Rice in Washington to ask for help ending Congo's war with its neighbors.

Secular Upbringing

Diamonds have been a backdrop to Gertler's life since his childhood in affluent northern Tel Aviv, where he had a secular upbringing. His mother ran a pop-music radio station, and his father was a goalkeeper for Maccabi Tel Aviv, a top-division pro soccer team, before becoming a diamond dealer.

As a youth, Gertler got up at 5 a.m. to learn how to polish gems before heading to school. He joined his grandfather, Romanian emigre Moshe Schnitzer, at business meetings to watch him negotiate diamond deals. When Schnitzer died in 2007, Benjamin Netanyahu, who's now Israel's prime minister, gave a eulogy.

Gertler, sitting below a stained-glass dome at his office in one of the Israel Diamond Exchange's four towers in Ramat Gan, just east of Tel Aviv, turns wistful when he talks about Schnitzer. He recalls a business lesson his grandfather imparted: "He told me: 'Dan, you meet your bankers and you ask for credit only when you don't need it. Just to secure it. Because when you need it, it is too late.'"

'Guy Has Guts'

At age 22, Gertler started buying rough diamonds so he could work with larger volumes, he says. Gertler flew between war-torn nations such as Liberia and Angola and the major diamond centers in the U.S., India and Israel, buying and selling gems, he says.

"From the beginning, he went his own way," says his uncle, Shmuel Schnitzer, 63, who was president of the World Federation of Diamond Bourses from 2002 to 2006. "The guy has guts. This is the basic thing about him."

Gertler broke with his family's secular tradition when he and Anat decided to adopt an ultra-Orthodox lifestyle. They've banned television and computers from their five-story, terraced house in Bnei Brak, whose crisp stone finishing and verdant shrubbery lining each floor contrast with the neighbors' concrete apartment buildings.

Charitable Giving

Today, Gertler donates to Jewish charities in Israel, including Migdal Ohr, which runs boarding schools for indigent children and orphans. He also helped finance a Jewish bone-marrow registry at the Ezer Mizion medical charity in Tel Aviv, which says it's the largest in the world of its kind.

In Congo, he supports the Chabad-Lubavitch center, which provides religious and educational services to Jews throughout Africa. Gertler's family foundation also contributes to charities operating in Congo, including health centers and Operation Smile, which performs surgery on children born with cleft palates. He has also put \$12 million into building an agricultural academy on the outskirts of Kinshasa, the capital, that co-founder Gil Arbel likens to a "Congolese kibbutz."

Gertler's love affair with Congo began in 1997, when the country was one of the top five producers of diamonds in the world. In May of that year, insurgents led by Laurent Kabila, the father of the current president, overthrew the corrupt regime of Mobutu Sese Seko, a U.S. ally who had ruled for 32 years. After taking Kinshasa on May 17, Laurent Kabila declared himself president and renamed the country Democratic Republic of Congo.

Befriending Kabila

A few days later, Gertler's plane touched down. Shlomo Bentolila, chief rabbi of Kinshasa's Chabad-Lubavitch center, arranged for the young diamond merchant to meet Kabila's son Joseph, the new army chief, at the InterContinental hotel, Gertler says.

The two clicked immediately, Gertler recalls. Both carried a heavy responsibility at a young age: Kabila was the commander of tens of thousands of troops, and Gertler was trading \$2 billion of diamonds annually, he says.

For the next year, they would often get together before sunrise at Kabila's compound. One day, Kabila suggested that Gertler meet the president. Laurent needed money to fight his war and wanted to offer Gertler a monopoly on Congo's diamond sales, Gertler says. Kabila asked for \$20 million in cash, Gertler says. Gertler agreed.

A few days later, he was back in Israel, still celebrating the deal, when the Congolese president called. He needed the money immediately.

Grandfather's Teachings

At 8 a.m., Gertler called Union Bank of Israel Ltd., where he successfully put his grandfather's teachings on building bankers' trust to the test. Using a combination of bank credit, inheritance, cash reserves and

liquidated stocks, Gertler scraped together the payment and sent it to the Swiss account of Congo's central bank, he says. Gertler had bet his fortune on a president at war.

The risks he faced became evident in January 2001, when a bodyguard shot Laurent Kabila dead and his son took power. To Gertler's surprise, his friend canceled his diamond monopoly and never explained why, Gertler says. Rather than hold a grudge or sue, Gertler sold diamonds without the monopoly and maintained his ties to Kabila, whom he refers to as "my friend Joseph."

The young president needed friends: When he took over, vast swaths of the country were under the control of rebel factions backed by neighboring Uganda and Rwanda.

Role as Envoy

Kabila asked Gertler to help woo support from the U.S., which had been suspicious of his father's Marxist pedigree -- Che Guevara fought alongside Laurent in Congo in 1965 -- to bolster his position as leader and help start peace negotiations with his neighbors.

In April 2002, Gertler says, he secretly shuttled between Washington, Kinshasa and Kigali, Rwanda, relaying letters between Kabila and Rice. Jendayi Frazer, a former special assistant to then-President George W. Bush, says she met with Gertler several times, both with Rice and on her behalf. Gertler's intervention was instrumental to talks that resulted in a peace accord, says Frazer, who now teaches international politics at Carnegie Mellon University in Pittsburgh. "He was serious and credible," Frazer says of Gertler. "He wasn't just trading on his friendship with Kabila."

By the time the peace deal was signed between the government and rebel factions in 2002, millions of people had died in Congo -- if not from bullets or machete blows, then from the breakdown of health services and sanitation.

Diamond Sales

Gertler, meanwhile, won back a near monopoly of Congo's diamond trade. One of his companies, Canada-based Emaxon Finance International Inc., paid \$15 million in cash and loans to the country's state-owned diamond miner, known as MIBA, for a four-year contract to sell 88 percent of its production.

Congo was desperate for investment at the time, Frazer says. "It's not like he crowded out a lot of other investors," she says. "There weren't many."

Kabila, who had formed a government in which former rebel chiefs were cabinet ministers as part of the peace deal, tried to kick-start Congo's economy. The ministers signed dozens of deals to exploit the country's natural resources with foreign companies, many of them at prices that undervalued the assets, according to reports by the World Bank and the Congolese Parliament.

In 2006, Kabila's People's Party for Reconstruction and Development, with a platform of rebuilding the country's war-ravaged infrastructure, was elected in Congo's first free elections in four decades, certified by the UN.

Mining Review

Kabila promised to tackle corruption and launched a review of mining contracts, observed by several Congolese organizations as well as the Atlanta-based Carter Center, the human rights group founded by former U.S. President Jimmy Carter.

The backroom deals continued, says Peter Rosenblum, a professor of law at Columbia University who headed the Carter Center's mission to observe the mining review. "What happened in 2008 and 2009 really proved that the Gertlers of the world would win by doing business the way they'd been doing it all along," Rosenblum says. Today, Transparency International ranks only a dozen countries below Congo in its Corruption Perceptions Index.

As Kabila cemented his hold on power, Gertler expanded beyond diamonds into mining of other minerals and metals, forging ventures with government firms and foreign partners. Gertler also controls companies that won the rights to two oil blocks along the Ugandan border on Lake Albert, according to three people familiar with the matter.

Charm and Aggression

When asked whether his companies have stakes in the blocks, Gertler replies, "If there is the right opportunity for us to have a big oil play in Congo or somewhere else, we will definitely go for it."

Six mining executives who have done business with Gertler say he mixes charm and aggressiveness to make deals. During negotiations, which are often in French -- a language Gertler only partially understands -- he will be hunched over his BlackBerry, seemingly oblivious to the debate, says Pieter Deboutte, the Belgian who runs Gertler's business in Congo.

Then, suddenly, he'll catch everyone off guard by interjecting, "Stop, wait a bit!" and launch into a list of orders in English to his staff, Deboutte says.

Big Profits

Gertler's dealings can be wildly profitable. In one case, he earned a 500 percent return in just six months without risking a single penny as the middleman in a deal for Societe Miniere de Kabolela & Kipese SPRL, or SMKK, which owns a copper and cobalt deposit in the heart of Katanga's richest mining zone.

In 2009, SMKK was half-owned by the state's Gecamines, short for La Generale des Carrieres & des Mines, and half-owned by ENRC, the Kazakh-founded mining company that's listed on the London Stock Exchange. ENRC wanted to acquire all of SMKK but didn't exercise its right of first refusal to buy the government's stake, according to the joint-venture agreement.

Instead, ENRC made a deal with a company controlled by Gertler's family trust -- Emerald Star Enterprises Ltd., based in the British Virgin Islands. On Dec. 21, 2009, ENRC paid the Gertler firm \$25 million for an option to buy the remaining 50 percent stake of SMKK, according to filings ENRC made with the London Stock Exchange.

Gertler didn't even own the asset he was selling the option on -- at least not yet.

'Maximize Value'

In February 2010, Gecamines agreed to sell its shares in SMKK to Gertler's Emerald Star for \$15 million, according to the sales agreement published by the mines ministry.

Four months later, ENRC completed the transaction by buying Gertler's Emerald Star for \$50 million -- paying a total of \$75 million, or five times the price Gertler paid for the asset. Gertler says it's not his fault if the government didn't get a good price for its SMKK holding.

"That is what we know how to do better than anyone else: We know how to maximize value for our projects," he says. "If the government would like to hire my services to maximize value for their stake, they should approach me. No problem."

Gecamines' current managers declined to comment because, they said, they took over the company after the transaction, which was detailed in an ENRC earnings report released in May

2010. ENRC declined to comment.

Copper's Attraction

Copper is what attracts most miners to Congo, Gertler says. The metal traded at \$7,991 a ton in London on Dec. 5, more than double its price of \$3,190 on Jan. 5, 2009. The belt of earth that stretches from northern Zambia into southern Congo holds one of the world's biggest reserves of copper.

About 37 miles from SMKK, Gertler has a copper and cobalt joint venture with ENRC known as Comide SPRL. Touring around the mine, Gertler jumps behind the wheel of a small bus. While his associates laugh nervously, Gertler almost crashes into two parked helicopters and then speeds around the mounds of ore, sending his passengers reeling across their seats.

“He’s like a kid,” Yariv Bahat, Gertler’s exploration manager, yells, sweat streaming down his face. Gertler says he hasn’t had a driver’s license for years.

Gertler increased his stake in the mining property in 2011 -- one of at least six assets the state sold to him that year, according to company documents obtained by Bloomberg.

A company based in the British Virgin Islands, Straker International Corp., bought state-owned Gecamines’ 25 percent stake in the Comide project in 2011, according to Comide board minutes from June 29, 2011. Gertler controls Straker, according to two people familiar with the matter.

Unannounced Deal

The full details of the sale weren’t published, in breach of the terms of the IMF’s loan agreement with Congo, resulting in the Fund’s decision this month to cancel its program with the country, the IMF says. Gecamines Chairman Albert Yuma says he wasn’t aware of the sale. Gertler refuses to discuss it.

In another deal, in June 2010 and March 2011, state-owned miner Societe de Developpement Industriel & Minier du Congo, or Sodimico, sold more than 30 mining licenses, including those for two copper projects, to Gertler-linked companies based in Hong Kong and the British Virgin Islands for a total of \$60 million. Numis Securities and Oriel Securities estimated the two projects to be worth \$1.6 billion, though their valuations included ore-processing plants as well as the licenses.

Sodimico didn’t even get to keep all of the money it made from Gertler’s companies, Laurent Lambert Tshisola Kangoa, its chief executive officer, told Bloomberg News in July 2011. He said the mines ministry demanded he give \$10 million to the country’s general election fund.

‘Not Economic’

“It was not an economic decision by Sodimico,” he said of the sale. Gertler’s joint venture relinquished the rights to the biggest of the mines, Frontier, according to the mines ministry. In July 2012, Congo sold ENRC the license for Frontier, which in 2009 had been the country’s biggest taxpayer, for \$101.5 million.

“When you see similar things with slightly different variations happening again and again, you have to stop and think, ‘Obviously something is going wrong,’” Daniel Balint-Kurti, chief researcher at Congo for Global Witness, told the U.K. Parliament’s International Development Committee in 2011.

At the Mutanda project, too, Gertler paid far less for his 20 percent than his partner, Glencore International, paid for similar assets. Gertler’s stake came to light only in May 2011 - - months after it was purchased -- when Glencore spelled out the mine’s ownership deep in the 1,637-page prospectus for its initial share sale.

Stake's Value

Glencore's outside consulting firm valued the entire mine at about \$3 billion. Based on net present value calculations using figures from Glencore's May 2011 prospectus, Gertler's stake, including royalties and other payments, was worth \$849 million at the time.

One of Gertler's British Virgin Islands-based companies bought the stake from Gecamines for \$120 million in March 2011, according to a copy of the contract Gecamines published under pressure from the IMF. About a year later, in May 2012, Glencore paid \$340 million, plus \$140 million in assumed debt, for 20 percent of the mine, increasing its holding to 60 percent. Gertler says Glencore's 20 percent purchase was worth more than his because it gave them control of the company.

Glencore CEO Ivan Glasenberg says Gertler has played an important role in Congo.

'Supportive Shareholder'

"His involvement has helped to attract much-needed foreign investment to the DRC," Glasenberg says. "He has been a supportive shareholder with us in our largest operation in the country, Katanga," he says, referring to Katanga Mining Ltd., a nearby copper producer that they co-own.

Surveying the land around one of his cobalt mines, Gertler says he will stick by Congo. "I took a decision that I wanted to be a long-term player in Congo," he says, adding that his aim is to help develop Congo as well as to enrich himself and his family. "At the end of the day, yes, I'm looking to create a lot of wealth."

Gertler dismisses critics who say he's amassed a fortune at the expense of the world's poorest people. "Our deals and performance speak for themselves," he says. "And whoever doesn't feel comfortable investing with us will not."

In this article

HG1

Generic 1st 'HG' Future

306.75 USD/lb. ▼ -6.15 -1.97%

GLEN

GLENCORE PLC

371.70 GBp ▼ -8.85 -2.33%

UKX

FTSE 100

7,603.85 GBP ▼ -27.48 -0.36%

GC1

Gold

1,277.30 USD/t oz. ▼ -2.80 -0.22%

KAT

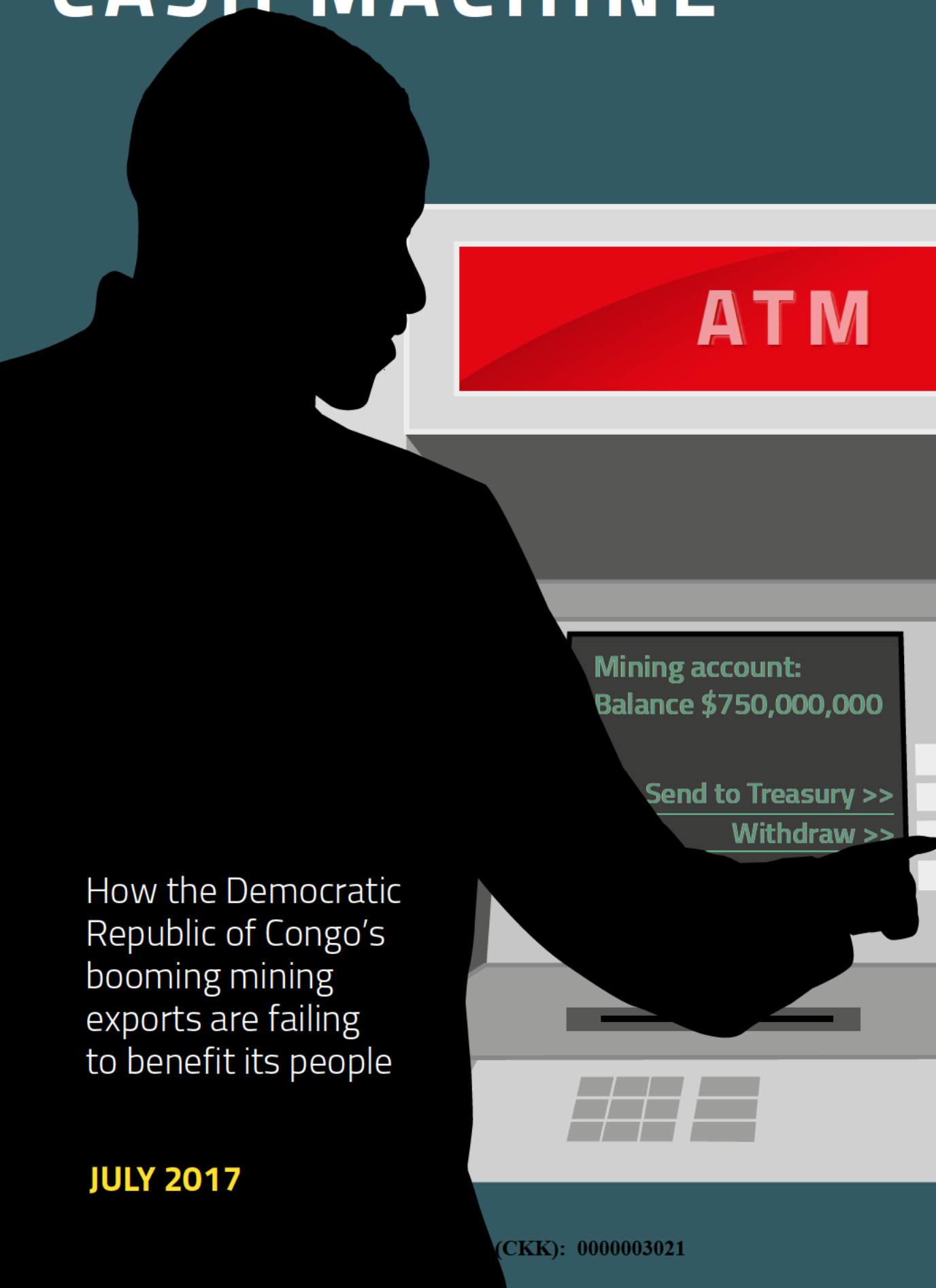
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REGIME CASH MACHINE



global witness



How the Democratic Republic of Congo's booming mining exports are failing to benefit its people

JULY 2017

(CKK): 0000003021

COPPERBELT MAP

Congo's main copper-producing region is known as Katanga, in the south of the country. In 2015 the province of Katanga was subdivided into four new provinces. The Katanga region is home to the majority of the most important industrial mining operations in Congo.

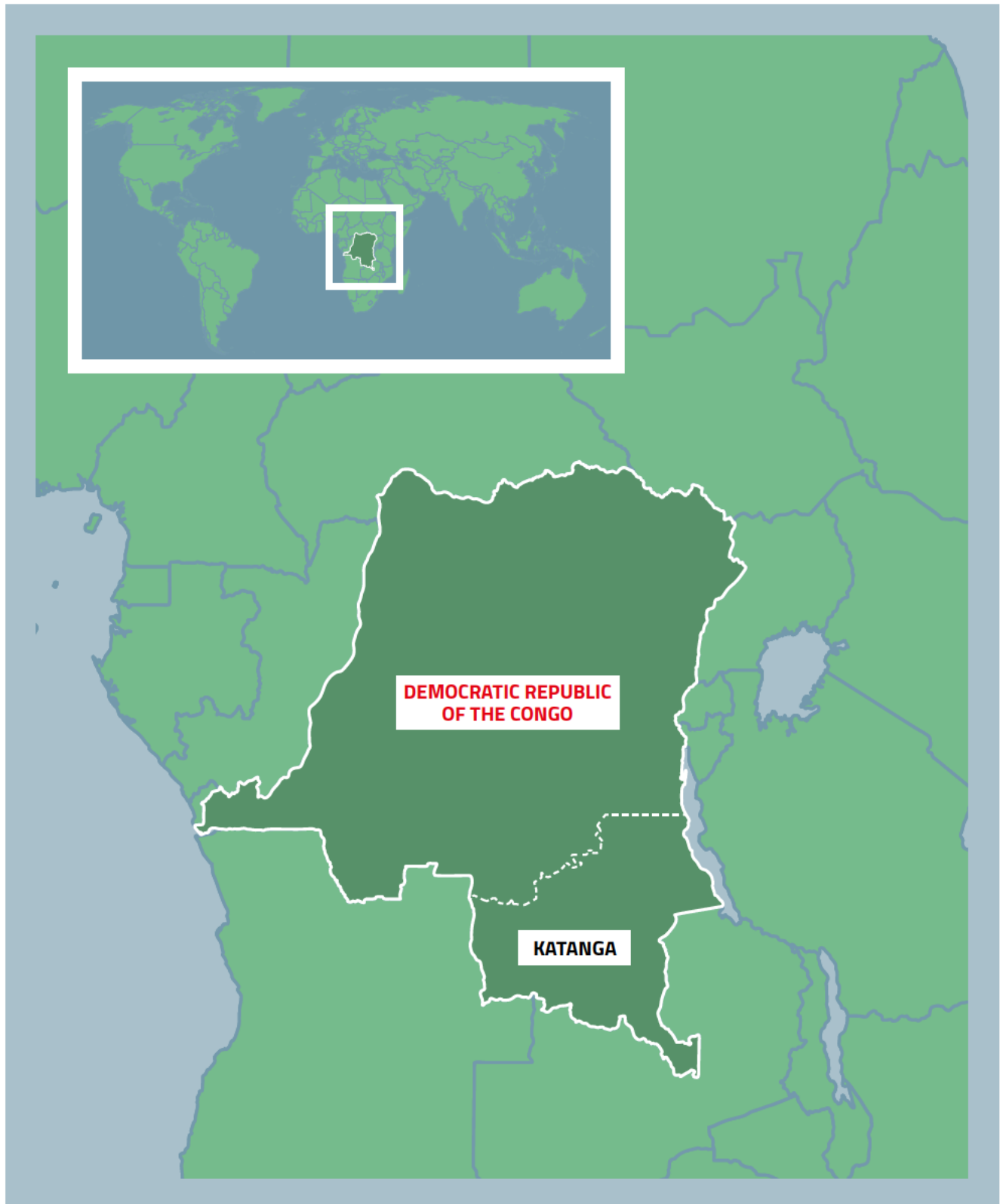


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CAST OF CHARACTERS

1. STATE ORGANISATIONS

GÉCAMINES

(pronounced 'jek-a-mean') Congo's biggest state-owned mining company and a closed book in terms of revenue management. The company has shares in over 20 mining projects but is haemorrhaging money.

CONGO'S NATIONAL TREASURY

Where payments to the state (taxes and other fees) should end up before being allocated to the state budget. Paying taxes or fines to the treasury is equivalent to paying them to the state.

CONGO'S CENTRAL BANK (BANQUE CENTRALE DU CONGO)

Regulates Congo's banking sector. Albert Yuma, the well-connected Chairman of Gécamines, is head of the Central Bank's audit committee.

CONGOLESE TAX AGENCIES

Three main national tax agencies called DGI, DGDA and DGRAD, as well as the (now defunct) provincial agency for Katanga called DRKAT. They collect taxes on industrial mining for the state.

A rusted Gécamines sign hangs in Congo's southern Katanga region.
© Kenny Katombe/Global Witness 2017.



2. PEOPLE

© UN Photo/Cia Pak



JOSEPH KABILA

Congo's President since he succeeded his assassinated father in 2001. He has won two disputed elections in 2006 and 2011 and was supposed to step down in 2016 but has held onto power as elections have been delayed.

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Francois alenoir



AUGUSTIN MATATA PONYO

Congo's technocratic and reformist Prime Minister from 2012 to late 2016. Ponyo resigned in November amid the crisis around delayed elections.

© Jacques Demarthon
Afp/Getty Images



ALBERT YUMA

The Chairman of Congo's state-owned mining company, Gécamines. He is a wealthy businessman and holds many public roles, including the Presidency of the Congolese Business Federation, the FEC, and head of the Central Bank's audit committee.

© Simon Dawson
Bloomberg/Getty Images



DAN GERTLER

A billionaire mining magnate and close friend of Congo's President Kabila. Gertler and his network of offshore companies were at the heart of a series of controversial mining deals. Evidence from US authorities linked Gertler to millions in bribes paid to Congo officials.

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Collection/Corbis
via Getty Image



MOBUTU SESE SEKO

Congo's dictator from 1965 to 1997, supported by the West. He looted the country until he was overthrown by rebels led by Laurent Desire Kabila, the now-dead father of Congo's current President Kabila.

3. BUSINESSES AND NON-STATE ORGANISATIONS

EITI

A global multi-stakeholder initiative that promotes transparency in oil, gas and mining sectors. It publishes country-specific reports including data on payments by mining companies to the state.

BGFI

A private bank whose Kinshasa branch is headed by a childhood friend of President Kabila. A BGFI employee blew the whistle on embezzlement and corruption being routed through the bank.

THE FEC

The Congolese Business Federation. The FEC represents the interests of private investors in Congo. It is presided over by Gécamines' Chairman Albert Yuma.

SCORPION MINERALS PROCESSING

A little known South African company that was given an important two-year contract by Gécamines to boost its mining production.

GLOSSARY OF TYPES OF PAYMENT

In Congo, mining companies contribute to state funds via four main types of payment.

TAXES - compulsory payments to the Congolese state, levied on industrial mining companies as a percentage of corporate profits, or calculated on the basis of certain goods, services and transactions.

ROYALTIES - a payment made by mining companies often calculated on the volume of minerals extracted. In Congo, these are paid to Gécamines and/or the state.

SIGNATURE BONUS - a payment from a mining company to the state and/or Gécamines, agreed upon the signing of a contract.

DIVIDENDS - a share of profits paid by a company to its shareholders, which for mining companies in Congo often include Gécamines.

OVERVIEW

More than \$750 million of mining revenues paid by companies to state bodies in the Democratic Republic of Congo was lost to the treasury between 2013 and 2015. Instead, the money disappeared into a dysfunctional state-owned mining company and opaque national tax agencies. There is no clarity on what this money was spent on or where it ended up, but testimony and documentation gathered by Global Witness indicates that at least some of the funds were distributed among corrupt networks linked to President Joseph Kabila's regime.

Gécamines, the state-owned company, is the main culprit in the diversion of Congo's mining revenues from the budget. Its chairman, Albert Yuma, was appointed by Kabila in 2010 and is an ally of the president. He is described as a "financier" to the regime. He is on the audit committee of Congo's Central Bank and is the head of Congo's Business Federation.

Our investigation shows how Gécamines is haemorrhaging money in suspect transactions – sometimes involving millions of dollars in cash – while simultaneously failing to make any substantial contribution to the national treasury or invest in its own mining operations. The company is saddled with well over a billion dollars of debt and it carries out almost no mining of its own, despite having once mined up to 500,000 tonnes of minerals in a year.

Gécamines has apparently prioritised paying off debts to a friend of the president over paying its staff, who have at times gone months without their salaries, and has handed out a crucial contract in opaque circumstances to a little-known sub-contractor. Meanwhile, it fails to pay dividends to the government, its sole shareholder, and barely pays more than \$20 million in tax per year, according to an industry transparency body – much lower than the contributions of several private mining companies in Congo.

Furthermore, each year Congo's national tax agencies keep back a portion of mining revenues for their "own funds", rather than transfer it to the treasury. What happens to this money is unclear. The agencies are secretive and often headed by powerful individuals with close professional or personal ties to the Prime Minister's office or to the Presidency. The opacity around the withheld funds makes this system highly susceptible to corruption.

The tax agencies are permitted by law to issue penalties to companies for violations of tax codes and to keep a proportion of the fines. These fines can sometimes be enormous, running to hundreds of millions of dollars. Global Witness has found that this system has encouraged predatory behaviour by agencies, which



Raw copper ore © Chris Crowley/iStock

have been incentivised to impose penalties on spurious grounds and keep huge sums for themselves. So, while the tax agencies' retention of part of the penalties is legal, it too can encourage and facilitate corruption.

The amount of mining money that failed to reach the national treasury from 2013 to 2015 rises to \$1.3 billion when company payments to other government bodies and a provincial tax agency that has since been dissolved are included. It is unclear what this money is ultimately spent on.

This analysis has been made possible in part by the steps towards transparency in some parts of Congo's mining sector in recent years, notably the information published by the Extractive Industries Transparency Initiative (EITI). In order to close down the diversion of state funds public and private bodies involved in Congo's mining system need to commit to greater transparency.

Congo possesses a geological endowment the envy of countries worldwide. It should be extraordinarily wealthy, but the average Congolese person is among the poorest on the planet.

Congo's economy is driven by its mining sector, and primarily by two metals: copper and cobalt. Copper is used for building and electrical equipment across the

planet, and cobalt – a by-product of copper mining – is in the midst of a price boom due to soaring demand for the lithium-ion batteries used in electric cars. Together, the two metals make up 80 per cent of the country's total export earnings. Congo became Africa's biggest copper producer in 2013, and is the world's leading source of cobalt. Each year, up to \$10 billion worth of copper and cobalt is dug up from Congo's soil and sold abroad. However, our analysis shows that as little as six per cent of annual mining export reach the country's budget.

Congo's mining revenues have been the focus of Global Witness investigations in the past. Since 2010, Global Witness has reported on suspect mining deals involving a network of offshore shell companies linked to Dan Gertler, a friend of Congo's President Joseph Kabila. Global Witness has questioned these deals, showing how Gertler obtained licences at knockdown prices before selling assets on to major mining and commodities companies at or near full price. The settlement of a US investigation into the Och-Ziff hedge fund in 2016 strongly suggested that Gertler and his associates were paying huge bribes – up to a total of \$34 million – to Kabila and his right-hand man for access to mines. A spokesman for Gertler disputed all accusations of wrongdoing in any dealings in Congo including those with Och-Ziff.



Demonstrators gather in front of a burning car during an opposition rally in Kinshasa in September 2016.
© Eduardo Soteras/Afp/Getty Images 2016

Just five such deals saw Congo lose out on \$1.4 billion in potential revenues. Having shown how these deals have resulted in Congo's mining revenues flowing offshore, with this report we aim to tell the other half of the story: what happens to mining money that stays onshore, inside Congo.

Congo is in the midst of a political crisis. President Kabila was obliged by the constitution to step down at the end of 2016. However, he has remained in power despite the protestations of political opponents and mass demonstrations that have faced deadly suppression from Kabila's forces. A fragile political truce fell apart in April when Kabila unilaterally appointed a Prime Minister, and there is little sign that elections will be organised soon. The diversion of much-needed public funds into parallel networks close to the regime serves only to entrench the deadly divisions in Congolese politics today. It also heightens the risk of Congo backsliding towards the disastrous civil wars from which it has not yet fully recovered.

Article 58 of the Congolese constitution says that every Congolese has the right to enjoy the benefits of the country's national wealth, and that the state has a duty to redistribute that wealth equitably and to guarantee the right to development. To the vast majority of Congolese today, those are empty words. The hollowing out of Gécamines and the fragmented tax system mean that the agencies that are supposed to be gathering up mining revenues for the benefit of all, are in fact open to abuse by political elites seeking to extract cash from the mining sector: they are a regime cash machine.

Now is the time for the gaps in the revenue-collection system to be closed and for more mining money to reach the treasury. After a two year slump, copper prices are set to rebound strongly while cobalt is booming. Copper and cobalt price rises, coupled with the recent production boom, could reinvigorate Congo's economy.

The country and its people can scarcely afford to miss out.

BOOMING MINES, BUT TOUGH TIMES

“Here, either the state doesn’t exist anymore, or it preys on us,” says Claude, a traditional leader from Lubumbashi in Congo.¹

At 83, he has lived long enough to see his country change name five times. Born under Belgian colonial rule, he lives in Congo’s Katanga copperbelt in the south of the sprawling central African country. For him, Gécamines, the Congolese state-owned mining company, used to symbolise opportunity in Katanga. Today, however, the company is a shadow of its former self.

In the last 15 years private international mining firms have moved in to operate alongside a remodelled Gécamines. Claude says; “despite the large presence of mining companies, our suffering increases daily.”²

Those born in Congo have some of the worst life chances anywhere: ten children out of 100 die before they reach the age of five. Over 40 per cent have stunted growth due to malnutrition.³

Raymond, a Gécamines worker since the 1980s, goes further, describing how Gécamines used to “spoil” its workers. “It was the vache laitière [cash cow] of the whole country,” he says. But when Gécamines virtually stopped production in the 1990s life became unbearable. “The company is now an emaciated cow, with no more milk to feed its children.”

It need not be this way for Congo’s people.

On paper Congo’s mines have been booming; in 2014 Congo produced over a million tonnes of copper for the first time having in 2013 overtaken its southern neighbour Zambia to become Africa’s number one producer.⁴ It is even more dominant in the more lucrative cobalt trade, producing 60 per cent of the world’s cobalt.⁵ The mineral is essential for lithium-ion batteries found in mobile phones, laptops and electric cars. What Congo digs out of the ground helps fuel the Chinese and Californian economies. The demand for Congo’s cobalt is only like to increase: cobalt is essential for the battery technology needed for the shift to renewable energy.

But Beijing’s skyscrapers and the San Francisco Bay are a long way, literally and figuratively, from Katanga’s rolling savannah.



Gécamines “was the cash cow of the whole country. [But] the company is now an emaciated cow, with no more milk to feed its children.” – Raymond, a Gécamines worker. © Damien Glez

An aerial view of copper and cobalt tailings in Lubumbashi, the main city in Congo's copperbelt region. © Reuters/David Lewis 2015



MONEY DRAINS OFFSHORE AND DISAPPEARS ONSHORE

Global Witness and other researchers have shown in detail how Congo lost out on at least \$1.36 billion in five mining deals struck between 2010 and 2012. This is double the country's annual health and education spending. These secretive deals were struck with offshore companies which managed to get hold of mining licences at knockdown prices. Later, it was revealed that these companies belonged, or were linked, to Dan Gertler; a billionaire Israeli businessman who is a friend of Congo's President Joseph Kabila.⁶

Despite this offshore haemorrhaging of wealth, some mining money does remain onshore in Congo. The companies in the five offshore deals paid state bodies \$275.5 million for control of the mining assets (although they were worth at least \$1.63 billion).⁷ In addition, private international mining companies in Congo, together, pay over a billion dollars a year in taxes, royalties and other charges to tax agencies and the scandal-hit state mining company, Gécamines. Yet our analysis – based on the most comprehensive data available – shows that, year after year, Congo is losing out on a fortune. Between 30 and 40 per cent of the payments fail to reach the national treasury.

Front page of the UK's Financial Times from May 2013. The main story relates to Congo mining deals involving offshore companies linked to Dan Gertler. © Financial Times



Where is this money ultimately going? Why isn't more being used to relieve the Congolese people's immense suffering? Together with Congolese researchers, this is what Global Witness set out to investigate.

What we found helps to explain the paradox of poverty and plenty seen in Congo; of families a short drive from the centre of the bustling capital Kinshasa who rarely eat more than one meal a day. Of communities living in desperate need – without access to basic education and healthcare for their children – next to immense industrial mines in Katanga owned and operated by some of the richest companies on the planet.

METHODOLOGY

Global Witness engages with companies, governments and other partners around the world to tackle the issue of natural resource-driven corruption, armed conflict and environmental destruction. We have reported on how corruption and fraud in Congo's industrial mining sector has undermined the country's development. We have worked with Congolese and international civil society, policy-makers and business leaders to develop practical solutions.

In 2015 and 2016 Global Witness undertook four research trips in Congo, visiting the capital Kinshasa as well as Lubumbashi and Kolwezi in the heart of Congo's copperbelt. In total we interviewed over 85 people involved in Congo's industrial mining sector in Congo, South Africa and Europe. Interviewees included mining executives, Gécamines officials, civil servants, mining trade unionists, civil society leaders, politicians, provincial officials, tax agents and members of local communities. Prior to publication we wrote to the main organisations, companies and individuals named in the report to ask for their comment.

We gathered and analysed documents in the course of our research including mining data from the Division des Mines in the former Katanga province,⁸ Central Bank and Ministry of Finance statistics, Mines Ministry reports, Gécamines accounts, leaked contracts and tax documentation. Much of this data on the mining sector was incomplete or inconsistent. The collation of mining sector payment data in the reports of the EITI has proved to be the most valuable resource.⁹

A FORTUNE EVADES CONGO'S TREASURY

Each year as much as \$10 billion worth of copper and cobalt is dug up from Congo's soil and sold abroad. These two minerals make up 80 per cent of the country's total export earnings.¹⁰ Global Witness analysis of data from the Extractive Industries Transparency Initiative (EITI) shows that over \$750 million of mining sector revenues that flowed into the national tax agencies and state mining companies between 2013 and 2015 did not reach the national treasury.

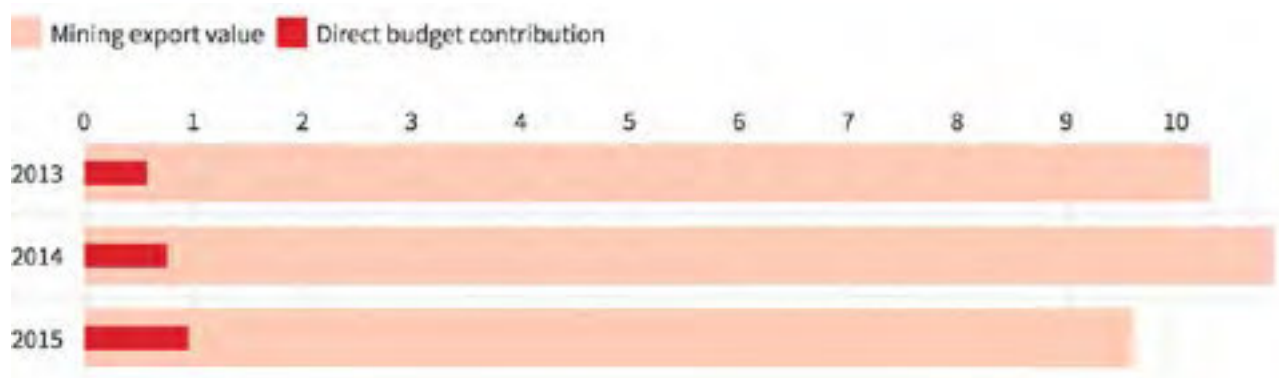
Let's start with how in theory the state, and Congo's population, should benefit.

Congo's tax agencies collect taxes, royalties (regular payments based on the volume of minerals extracted) and other payments from mining companies on behalf of the state. These revenues should be passed on to the Congolese treasury so that they can be allocated in the budget for spending on public priorities such as schools, hospitals and the courts. The state-owned mining companies – the most important of which is Gécamines – should use their licences, assets and participation in joint-ventures to try to make as much money as possible for their shareholder: the Congolese state.

What we found is that this system is broken.

According to the EITI data, \$149 million in 2013, \$314 million in 2014 and \$291 million in 2015 was held back from the treasury by state-owned mining companies and

HOW MUCH CONGO'S STATE BUDGET RECEIVES VERSUS MINING EXPORTS (BILLIONS USD)



Mining export value is calculated on the final sale price (based on 31 December prices) of the quantity of copper and cobalt exported by Congo per year. Costs for extraction, processing and transport are paid out of this, among others. Congo's tax take should be hundreds of millions more each year.

WHERE THE MISSING MINING MONEY GOES (MILLIONS USD)



national tax agencies for a total of over \$753 million. The money is retained by Congo's various tax agencies for their "own funds" or has disappeared into Gécamines. What this money is ultimately spent on is unknown.

On top of that, over the same period, various small government bodies received over \$170 million in tax payments and nearly \$400 million was paid directly to a provincial tax agency rather than to the national treasury. That tax agency has since been dissolved and replaced by four smaller agencies in a provincial reshuffle, and it is unclear what has been done with its assets.

Taken together, between 30 and 40 per cent of total mining payments each year failed to reach Congo's treasury in 2013-2015; that's over \$1.3 billion of mining revenues.

Global Witness's analysis of the EITI data is not all bad news for Congo's population. Revenues that reached the treasury each year increased between 2013 and 2015 by almost \$400 million, despite the hundreds of millions going missing.

Looking at other African countries, however, shows that Congo's performance is way below its peers.

Global Witness's analysis of the EITI data shows that just 68 per cent of Congo's total mining sector revenues reached the treasury in 2015. In 2014 that figure was as low as 59 per cent. In Zambia, which shares a copperbelt with Congo and whose economy is similarly dependent on the metal, the treasury manages to capture 88 per cent of mining sector revenues. That's almost 30 percentage points more than Congo's 2014 performance. Other countries on the continent did even better: Senegal, Cameroon and Togo all reported that over 90 per cent of revenues from mining and oil reached the treasury.¹²

Despite the same auditing companies compiling many of these EITI country reports, there are limits in how far they can be directly compared. The lack of a standardised template for EITI reports is a weakness of the initiative. However, the gulf between Congo and other countries cannot be put down to process. Congo is an outlier. EITI relies on companies and government agencies to provide accurate and honest payment declarations. While this leaves the initiative open to questions over the reliability of some figures, EITI remains the best publicly available source of collated statistics on revenue flows in Congo's mining and oil sectors.



HOW DOES THE EITI WORK?

EITI is a global multi-stakeholder initiative that promotes transparency in oil, gas and mining sectors. It does this by asking companies, government agencies and state companies to declare how much they pay or receive in taxes, royalties, dividends and other payments. The EITI seeks to reconcile any differences in these declarations. EITI then issues annual reports providing thorough details on the payments in the oil, gas and mining sectors of member countries.

The initiative has an 'International Secretariat' which coordinates the work of 'National Secretariats' in each member country. These are

charged with implementing EITI standards in member states. Each country also has a 'Multi-Stakeholder Group (MSG)', which is made up of representatives from the key interest groups involved in the EITI process: government, companies, and civil society.

The MSGs should oversee the implementation of the EITI process in their country.

Congo became a candidate country in 2008. Despite a temporary suspension beginning in April 2013 following a poor performance in an EITI audit, in July 2014 EITI declared that Congo was compliant with its reporting standards. Its reports for 2013, 2014 and 2015 have provided the underlying statistics for much of Global Witness's analysis of missing revenues in Congo's mining sector.

BOX 1: EITI AND THE TENS OF MILLIONS OF DOLLARS DUE TO GÉCAMINES SENT OFFSHORE

In late 2016 and early 2017, a Global Witness investigation revealed that Gécamines had signed away its rights to receive tens of millions of dollars of revenue from the Kamoto Copper Company (KCC) mine in Congo.¹³ The KCC mine is 75 per cent owned by a company controlled by Glencore; the commodities giant, and 25 per cent by Gécamines. Under the original joint-venture contract, Gécamines was supposed to receive royalties equivalent to 2.5 per cent of turnover, and a signature bonus of \$140 million paid over several years.

Global Witness revealed that Gécamines had signed away its rights to these payments to a secretive shell company called Africa Horizons Investment Limited, based in the Cayman Islands. Africa Horizons ultimately belongs to Dan Gertler, the billionaire mining magnate and friend of President Kabila who was at the heart of previous mining asset sale scandals in Congo. Earlier this year, Global Witness showed that at least \$100 million had been paid to Gertler's companies as part of the deal.

Glencore declared the 2013 and 2014 payments it had made to Gertler's company as payments to Gécamines, in its submissions to the EITI. Glencore has now admitted, in a letter to Global Witness, that payments due to Gécamines under the terms of the original contract were redirected to Africa Horizons since 2013, but said it had followed Gécamines' instructions under the terms of a new arrangement. KCC and Gertler's representatives claimed that Gécamines had sold its royalty rights to Africa Horizons, but none of the parties concerned will say for how much. Gertler representatives deny any wrongdoing in his Congo deals and have said that Gécamines made money from the sale of the KCC royalty rights. Gécamines has not commented.

Glencore's declarations to the EITI in 2013 and 2014 were misleading, when it said its KCC mine had made significant royalty and signature bonus payments to Gécamines. This shows a weakness in the EITI, especially in the process of reconciling payments. If private and state-owned companies simply fall into line with each other's declarations, without publishing proof of payments or receipts, then the data is open to manipulation. Glencore's spokesman said that its declarations to EITI on payments to Gécamines had included payments to

third parties on Gécamines behalf or at its behest. Glencore added that it had declared the payments to Gertler's company as payments to Gécamines in its EITI submission "because the payments discharged KCC's obligations to make these payments to Gécamines".

\$50M PLUS IN NEW PAYMENTS CHANNELLED THROUGH GIBRALTAR

For its 2015 report Congo's EITI body has calculated that Gertler's company received \$83.5 million in royalties and signature bonus payments in four transactions in as many months in 2015. Around \$30 million of this total (two signature bonus payments) was already accounted for in Global Witness's reporting, but that leaves over \$50 million of royalty payments newly revealed by EITI. This means that Gertler has received at least \$150m from the deal with Gécamines regarding KCC, which was signed for an undisclosed sum.

The EITI also provides some fascinating information about how these 2015 payments were made. It shows that sums were transferred from a bank account (presumably belonging to KCC) at Standard Bank Mauritius to an account at Royal Bank of Scotland International in the name of 'Hassans clients 1' for Africa Horizons. Hassans is a Gibraltar-based law firm frequently used by Gertler's companies. Global Witness wrote to Gertler's representatives to ask about the new information in the EITI report, but did not receive a response.

EITI demanded further information from Gécamines, including what, if anything, it received in exchange for the rights to the royalties. However, in a familiar twist, the state-owned company did not provide any further details by the time EITI circulated its 2015 report, though the report notes that Gécamines promised to publish its contract with Africa Horizons "as soon as possible".¹⁴

This episode shows both the strengths and weaknesses of EITI. It remains the most comprehensive set of statistics available for analysing Congo's mining sector and EITI has, after the deal was revealed, been able to provide useful new information. However, its reports published false information for two years, as it relies on the accuracy of declarations given to it, and the initiative has yet to pierce the opacity of state-owned Gécamines' finances.

In early 2017, Glencore ended their decade-long partnership with Gertler in Congo in a billion-dollar buyout.

A satellite image of the huge KCC mine in Congo's Katanga region. © 2016 Google Earth and 2016 Digital Globe



A BLACK HOLE IN THE ECONOMY

At the heart of Congo's industrial copper and cobalt mining operations is Gécamines, the most prominent of the country's state-owned mining companies. It's also central to the problem of revenues not reaching the treasury, and has a history of being looted by a corrupt leader clinging to power.

“Gécamines is practically a black hole. A black hole where you don't know who is doing what, where the money goes, which deal is going where, under what conditions and so on.”

Cyrille Kabamba, Congolese civil society activist.

Gécamines traces its roots back to colonial times. Nationalised in the 1960s, it used to be a major mineral producer in its own right. At its peak in the 1980s, it contributed 43 per cent of the country's budget revenues and produced almost 500,000 tonnes of copper a year.¹⁵ It was a towering presence in the lives of the Congolese. Augustin Katumba Mwanke, who was – until his death in 2012 – the hugely influential right-hand man of President

Kabila and a mining dealmaker, wrote of life growing up in Katanga in the 1970s: “We breathed Gécamines. We lived Gécamines. We dreamed of Gécamines... I dreamed of only one thing: to become...CEO of Gécamines. It was the idol, the ideal, the sphynx of my fantasies.”¹⁶

But then, in the 1990s, Gécamines collapsed after decades of looting by former President Mobutu Sese Seko.

Michela Wrong's book on the final years of Mobutu's rule recalls the role of Gécamines' cash in maintaining the ageing dictator's grip on power. She writes of Gécamines; “for a president in constant need of ready cash, there could be little doubt where to turn.”¹⁷ According to Wrong, on one occasion in the 1980s Mobutu had a Gécamines subsidiary send \$100 million to one of his accounts. A further \$400 million went missing in 1988.¹⁸

It would not be until the 21st Century – after the destruction caused by the First and Second Congo Wars – that the company was reborn in its current form. On advice from the World Bank, in 2010 the Congolese government transformed Gécamines into a “commercial” operation, in which the state owns all the shares. It is now primarily a junior partner in over 20 copper and cobalt projects operated by major mining companies from Europe, China and elsewhere. It has also been central to some of the asset sale scandals previously exposed by Global Witness and others.

A view of an open pit at Tenke Fungurume, a significant copper and cobalt mine in Congo's copper-producing south. © Reuters/Jonny Hogg 2013



On one level, the transformation of Congo's industrial mining sector with Gécamines at its heart has been a success. Congo as a whole produced just over 16,000 tonnes of copper in 2003.¹⁹ Since 2014 it has produced one million tonnes of copper per year, more than any other country in Africa.

However, in terms of generating funds for the state, Gécamines has gone backwards since its 1980s heyday. Having failed to relaunch as a significant producer of minerals, Gécamines now operates more as a caretaker of Congo's copper and cobalt wealth. Gécamines contributed around \$15 million in taxes to government out of a reported income from mining of \$265 million in 2014, according to the EITI. In 2015, it paid just \$21.8 million out of reported revenues of \$249.5 million.²⁰

Despite being at the heart of the most important sector for Congo's economy, Gécamines only contributed 0.3 per cent of all of the country's revenues in 2014; the year the country first topped one million tonnes of copper output.²¹

THE KINGPIN

Gécamines today is dominated by its Chairman, Albert Yuma, who controls the company with very little oversight. Under Yuma, money has flowed into Gécamines, but there have been few signs of productive investment of those funds. Mining production has collapsed and wages have gone unpaid. A civil servant at the Ministry of Mines anonymously told Global Witness: "you should forget Gécamines my friend. It's an empty shell. Plunder is done in the open. Decisions come from the top [officials] and there's nothing we can do about it."²² An experienced Gécamines official said Yuma's tenure has seen Gécamines' wealth flow to a small group of "oligarchs".²³

Like President Kabila, Yuma is from the north of the former Katanga province. He was sent to school in Belgium at the age of nine and returned to Congo in his late twenties after having studied at the Université catholique de Louvain outside Brussels, Belgium.²⁴

Often dressed impeccably – in a three-piece suit with a handkerchief in his top pocket matching the colour of his tie – the bespectacled Yuma is a successful businessman. He made his money in textiles before expanding his interests into property, food and transport. His Kinshasa-based clothing business has won contracts to supply uniforms to the Congolese army, among others.²⁵

Congo's president appoints the head of Gécamines. A senior Gécamines executive in Lubumbashi, speaking on condition of anonymity, told a Global Witness researcher that Yuma was given control of the state mining company because of his "political connections" and that he "only answers to the President".²⁶



Gécamines Chairman Albert Yuma.
©Jacques Demarthon/Afp/Getty Images

In addition to leading Gécamines, Yuma also heads up Congo's Central Bank's audit committee and is the President of the Congolese Business Federation (FEC - Fédération des entreprises du Congo), the country's main business lobby group. There is a clear conflict of interest in Yuma's multiple roles in the private sector, the state mining company, and at the regulator of the financial system. His Gécamines role requires him to be a caretaker of Congo's mineral wealth. However, Yuma's FEC led business lobbying that shut down a revision of the mining law in early 2016 which could have increased the government's tax take.²⁷ The Mining Chamber of the FEC hailed the decision to drop revision of the law saying that "a more onerous code would drive investors away".²⁸

Under Yuma, Gécamines has also avoided parliamentary scrutiny. In 2011, just a year after Yuma was appointed chairman of Gécamines and the company was "commercialised", the head of the audit board of the Congolese National Assembly's Economic and Financial Committee told Bloomberg: "now that they're becoming a private company they don't tell us anything."²⁹

Yet Gécamines has been turned into a commercial operation in name only. There are no private interests invested in Gécamines; the government owns all of its shares, which are not traded publicly. The "commercialisation" has granted Gécamines the veneer of independence from government, while it remains very much under the control of those in power. The company benefits from its privileged position as the primary state-owned mining company by farming out mining licences for huge fees and receiving signature bonus payments on contracts and royalties from mining projects. It is not competing on a level playing field with genuinely private companies in the sector.³⁰

For years Congo-focused local and international researchers, analysts, journalists and civil society organisations have described Gécamines as a black box: impenetrable, uncommunicative, opaque and ruthlessly ruled over by a narrow clique. The cliché is as well-worn as the financial operations are a mystery. The (mis-) management of Gécamines is the subject of indiscreet conversation among Congolese and Congo-watchers across the world. What's less common is solid evidence of the alleged corruption inside the company.

Then, in October 2016, a bombshell dropped in the pages of Belgian daily newspaper *Le Soir*.³¹ A high-ranking member of a private bank in Kinshasa, BGFI, had come forward as a whistle-blower, revealing information about transactions involving Gécamines. In December the *New York Times* reported on bank documents describing suspicious advance tax payments by Gécamines, some of which were made via the company's accounts at BGFI – the whistle-blower's bank.³²

Global Witness has separately obtained and reviewed the documents at the base of the *New York Times* story. The pieces of the story paint a picture of Gécamines as a cash machine for elites in Kinshasa, and Albert Yuma as a close ally of, and even commercial front for, President Kabila.

REGIME CASH MACHINE

The information revealed by the BGFI whistle-blower and the Gécamines bank documents sheds light on a web of connections between Yuma, Gécamines, President Kabila, and Congo's banks, including the

Central Bank. BGFI bank plays a central role. The head of BGFI in Kinshasa grew up with Kabila in exile in Tanzania and is considered a brother to the president.

The Gécamines bank documents first reported on by the *New York Times* show that, in the space of one week in December 2015, Gécamines sent two payment instructions to BGFI telling the bank to withdraw a total of \$8 million from its account and leave it, in cash, for collection at the Kinshasa branch of BGFI. The money was ostensibly for an advanced tax payment to the Central Bank, but the transaction is not traceable as it wasn't done electronically, and there is no way of knowing who picked up the cash. Two signatures on the payment instructions closely resemble that of Jacques Kamenga, Yuma's deputy at Gécamines.

A source with first-hand knowledge of Congo's banking sector told Global Witness that tax payments are always made by electronic transfer, never bags of cash. Another well-placed source with knowledge of these 'advanced tax' transactions told Global Witness that making payments available in cash at bank branches was extremely irregular. He described the arrangement as "an embezzlement operation". Money from payments like these should go to the Central Bank, the source said, "but it ends up elsewhere. There are many suspect operations taking place, and the number has increased recently."

Global Witness has serious questions over other 'advanced tax payments' made by Gécamines around the same period. The two payment instructions from Gécamines, telling BGFI to leave \$8 million in cash at its branch, are part of a longer series of seven such instructions stretching across seven months from

In October 2016 Belgian newspaper *Le Soir* broke a whistle-blower's account of suspect transactions involving BGFI Bank in Kinshasa. © *Le Soir*, 2016



November 2015 to June 2016. The others are for electronic transfers of money, totalling almost \$88 million from Gécamines to Central Bank accounts at another private bank, Rawbank.

In response to written questions from Global Witness, BGFI said that certain transactions in foreign currency had to be done in cash due to the lack of a clearing house organised by Congo's Central Bank. BGFI said that it "strictly observes national and international rules and principles" against money laundering. Rawbank said that it could not comment on transactions due to banking and client secrecy rules, but that it aimed to contribute to improved economic governance and transparency.

Gécamines' 2014 financial report, unavailable to the public but obtained and reviewed by Global Witness, describes other major 'tax payments' made via unconventional means. In August 2012 a huge \$30 million tax payment was made, on Gécamines' behalf, by the Belgian law firm Cabinet Liedekerke. There is no explanation in the financial report for why Liedekerke would pay \$30 million in taxes. The report includes this payment in a list of sums that constitute government debts to Gécamines, suggesting that the money was paid to the government but not credited to Gécamines' tax account.

When asked about the \$30 million 'tax' payment made on Gécamines' behalf, Liedekerke told Global Witness that it could not provide more information as it is bound by "strict confidentiality rules sanctioned by criminal law", but noted that it maintains "very strict due diligence requirements at all times."

The sums involved in these tax payments are unusually high, when compared with Gécamines tax payments as declared to EITI. In 2012, for example, Gécamines reported paying \$26.4 million in taxes – a sum outstripped by the \$30 million Liedekerke tax payment apparently made that year.³⁴

In fact, Gécamines barely pays much more than \$20-25 million in tax in any year, according to EITI statistics. However, the 2014 Gécamines accounts give a higher figure of \$70 million. Either way, the payment instructions issued to BGFI and Rawbank in the first half of 2016 account for a total of \$85 million of 'advanced tax payments' – much higher than a whole year of Gécamines' taxes according to both EITI and the company's own 2014 annual accounts. Global Witness wrote to Gécamines and the Central Bank to ask them to explain these anomalous payments and to ask whether the money really was used to pay taxes, but we did not receive a response.

The evidence provided by the whistle-blower to Belgian newspaper Le Soir showed another questionable transaction between Gécamines and BGFI. In September 2015 Gécamines borrowed \$30m from BGFI at an interest

rate of 11.5 per cent. The whistle-blower said that he had been instructed to deduct the interest payment twice, and indeed interest was claimed twice – once automatically, once manually – leading to a \$2.7 million overpayment by Gecamines to BGFI. Despite the whistle-blower's claim that he was instructed to do this on purpose, Yuma told Le Soir that the double-payment was a technical error and said it had been repaid.³⁵

In the same exposé, Le Soir described how a company called Egal, whose board is headed by Yuma, received almost \$43 million into its BGFI bank account in late 2013, just one month after the company was set up. The money was transferred to the company by Congo's Central Bank, where Yuma is, as previously noted, the head of the audit committee. Le Soir quotes the whistle-blower as saying that Egal is in fact owned by Kabila, and that Yuma is a front for the president.³⁶ Global Witness wrote to Yuma to ask about the conflict of interest posed by his role at the Central Bank, the reasons for the \$43 million transfer to Egal, and whether Kabila is behind the company, but received no response.

FINANCIAL MYSTERY

As the biggest state-owned company in Congo's most important economic sector, Gécamines should be very clear about how money flows in to and out of its accounts. Instead, Gécamines' financial dealings are a mystery to the public. As Gécamines does not publish any audited financial accounts, there is no public information about its income, expenditure, debt repayments or whether it pays any share of profits to its sole shareholder, the state. This leaves management unaccountable for the company's performance and use of its money.

Analysis of Gécamines' unpublished financial accounts and EITI information fail to give a clear picture of how much Gécamines earns from mining, and whether it passes any of that to the state.

Gécamines should be earning dividend payments from at least some of the two-dozen or so mining operations in which it is a shareholder. Due to its collapse as a miner of minerals in its own right, income from these joint ventures represents Gécamines' primary source of money. However, it is near impossible for Congolese citizens to discover what, if anything, Gécamines earns as dividends from its participations in these mining companies.

Gécamines and its joint venture partners should both be declaring any dividends paid to the state-owned company, according to EITI rules.³⁷ Either this is not happening, or Gécamines is not receiving any dividends, as analysis of EITI reports appears to show no dividend receipts.³⁸

The leaked Gécamines 2014 accounts reviewed by Global Witness do not provide much more clarity on dividend earnings. The accounts show \$110 million of “revenues from partnerships”, which covers many revenue streams, and could potentially include dividends.³⁹ However the vague terms mean it is unclear whether Gécamines’ shares in major projects are earning it cash dividends.

It would be in Gécamines interest to clearly state its earnings from dividends. The failure of international mining companies to pay the state mining company could be due to transfer mispricing, or overloading Congolese subsidiaries with debt to cancel out profits. Clear communications from Gécamines of its earnings could increase pressure on these companies to pay their fair share.

Gécamines’ statutes set out the ways in which profits should be dispersed to its shareholder, the government.⁴⁰ In practice, however, it does not appear to contribute anything in this way. The company is so heavily indebted and ostensibly performing so poorly that it has not had profits to pass on to government.⁴¹ There is no indication that a share of any profits was paid out to the state in 2013 or 2014, and nothing in the various EITI reports to suggest any such contributions were made.

The only other revenue stream for the government from Gécamines is taxes, but these may be meagre. Gécamines’ company accounts and its EITI declarations both list some taxes paid but disagree on the figure. According to the accounts, company’s tax payments for 2014 were almost \$70 million, yet Gécamines told EITI that it had paid just \$14.4 million in 2014.⁴² Gécamines did not respond to questions about its taxes.

Congolese NGOs working on the mining revenues and corruption have repeatedly called out Gécamines’ opacity. Ernest Mpararo of Congolese anti-corruption group LICOCO (*Ligue Congolaise de Lutte Contre la Corruption*) said: “the way in which these funds are managed [by Gécamines] is inadequate because there are no internal or external control mechanisms. As a result, the directors and Chairman manage Gécamines as their private property in complicity with some presidential advisors.”⁴³

THE BILLIONAIRE’S DEBT TAKES PRIORITY, WAGES GO UNPAID

The section on debt in Gécamines’ accounts suggests that the company prioritised repayments to Dan Gertler, a close friend of President Kabila. Gertler’s African Dawn Finance Ltd company received \$152 million in debt repayments and was paid off in full ahead of other creditors and Gécamines’ own employees. That payment

made up over three quarters of the \$200 million total debt repaid in 2014, according to the Gécamines 2014 accounts. Evidence from a US criminal investigation into a third party strongly suggests that Gertler has paid millions in bribes to Congolese officials and politicians – including a Congolese “Official 2” identifiable as President Kabila’s right-hand man – in the course of securing access to Congo’s mines.

While the Gertler debt dates from late 2012, the Gécamines accounts indicate that it is still in the process of organising repayments to the French Development Agency dating from 1986. That debt is so old it appears in the accounts in terms of French francs. Even only taking into account current outstanding loans, Gécamines had over \$450 million owing to various creditors over the course of 2014. The debt to Gertler made up a third of this total, but he received over three quarters of the payments servicing the total debt.

The prioritisation of repayments to Gertler’s African Dawn is even more troubling in light of Gécamines’ growing arrears in wage and pension payments. The Gécamines accounts show total debts from unpaid salaries rising year on year, from \$14 million of unpaid wages in 2013 to over \$25 million in 2014. In November 2016 the United Nation’s news site for Congo, Radio Okapi, reported that Gécamines workers had threatened to go on strike over 10 months of unpaid salary.⁴⁴ This followed an actual strike in the mining town of Kolwezi in 2014, again after months of unpaid wages for workers.⁴⁵

Yuma said in 2016 that the state miner’s monthly wage bill is \$9 million per month, which seems to be supported by the numbers contained in the Gécamines accounts for 2014. He has claimed that Gécamines has held onto money to reduce debts and pay wages, as well as for its long-term ambition to relaunch as a productive mining operation. Yet regardless of the size of the wage bill, the evidence in the accounts and from the miners’ strikes shows that not all of it is paid.

Gécamines did not respond to questions about why it had apparently chosen to prioritise payments to the president’s friend’s company ahead of other debts or staff wages.

Global Witness also wrote to Gertler’s Fleurette group who declined to comment, but has previously said that Gertler’s dealings in Congo are above board, including those with Och-Ziff. Gertler’s spokesman told Bloomberg in September 2016 that Fleurette and Gertler “strongly deny the allegations” based on the Och-Ziff evidence, and said they were “motivated by a hedge fund trying to put behind it problems sparked by people that have nothing to do with Fleurette.”

Global Witness spoke to Mathieu, a retired Gécamines employee, and his wife Jacqueline who said they had



A worker at Gecamines' copper concentrator at its Kambove operation in Congo's southern copperbelt. © Reuters/Jonny Hogg 2013

received almost nothing in terms of pension payments or assistance from Gécamines since his retirement. “Here we go four or five days without eating,” said Jacqueline. “There is no money to pay for school [for the children].”⁴⁶

“Gécamines is the state,” said Mathieu. “This money [his pension] belongs to us, but they have blocked it. That means there is nothing anymore.”⁴⁷

TALK IS CHEAP

As Gécamines does not publish audited annual accounts, observers have to look to its management and their statements to the media in the search for an explanation for withheld mining revenues. This often means listening to Yuma, whose public statements have brought him into conflict with even senior officials in Congo.

Congo’s Prime Minister between 2012 and 2016, the technocratic Augustin Matata Ponyo, clashed time and again with Yuma over control of Gécamines’ piles of minerals and cash. At the end of May 2016 a war of words broke out between the two powerful men after Yuma criticised the government’s economic policies. Matata

Ponyo’s office issued a scathing statement in response that was widely reported in the Congolese media. It said that poor “management of Gécamines has a negative impact on the reputation of the whole country”. It went on:

“In the almost six years that [Yuma] has been at the head of Gécamines as its Chairman, this state company has only recorded below-par performances... The Congolese people have lost several hundreds of millions of dollars [in blocked aid contributions] due to the poor governance of Gécamines... Can the Chairman of a state company with a chronic lack of governance give lessons to the Government, its sole shareholder?”⁴⁸

In summer 2016 Yuma took to Radio France Internationale to defend his chairmanship, claiming in the process that Gécamines has “audited, certified accounts”.⁴⁹ However, until such accounts are published, there remains almost no publicly available information on Gécamines’ financial status beyond Yuma’s statements to the press.

Global Witness wrote a six-page letter to Gécamines prior to publication asking for comment on the analysis in this report and a similar letter to its Chairman, Albert Yuma. No response was received to either.



An excavator at Gécamines' Kamfundwa open pit copper mine in the former Katanga province.
© Reuters/Jonny Hogg 2013

STATEMENTS DON'T ADD UP

In the course of hitting back against his critics, Yuma has argued that Gécamines withholds money in order to relaunch as a major producer of minerals. However, under his leadership production has decreased. His arguments for why the company has held back money from the treasury don't add up.

Yuma's "principal hopes" in the short-term for re-launching Gécamines as a mining operator have been based on a mine called Kamfundwa. This is according to a July 2016 internal letter from Yuma to company management, seen by Global Witness.⁵⁰ Despite Kamfundwa's strategic importance, a little-known operator called Scorpion Minerals Processing was selected as the sub-contractor for the relaunch work at the mine. This was rather than a company with an extensive international track record in extractives. The Scorpion contract appears to have caused concern even within Gécamines' own hierarchy. In his letter, Yuma said he was writing to counter the "surprise" and "concerns" raised by some personnel about the relaunch project.⁵¹

Global Witness asked Gécamines and Yuma why Scorpion had been selected for this crucial work, but received no response.

Yuma's letter to Gécamines management shows his determination to push the Scorpion deal through. In it, he threatens "immediate sanctions" against executives who do not take on their "professional obligations" in the project.⁵² Global Witness also obtained a summary of a Gécamines board meeting in which the Scorpion plan

was presented to Gécamines executives. These notes show that Gécamines' own auditing and control divisions will not have the power to hamper the Scorpion deal, and that Gécamines will shoulder the tax burden and costs of the project.⁵³ The project consists of five separate contracts, none of which has been made public and whose terms are unknown, even to many inside Gécamines.

In December 2016 a radical southern Congolese political party, PAKAR, accused Yuma of owning shares in Scorpion. Two Gécamines executives, one former and one current and both requesting anonymity, corroborated the allegation when asked by Global Witness, but were unable to verify the claims with documentary evidence. We asked Yuma and a Scorpion director about the allegation, but they did not respond.

There is little in the public domain to explain why Scorpion, headed up by South African Stephanus de Kock, might have been chosen to oversee the Kamfundwa operation. South African company documents retrieved by Global Witness cast doubt on Scorpion's financial strength. De Kock is relatively unknown in South African mining circles, according to inquiries made by a Global Witness researcher. A company called Scorpion Mineral Processing, with De Kock as director, was created in 2009 but liquidated in December 2015. De Kock is also director of two similarly named companies in South Africa, one of which is being "deregistered" for failure to provide an annual report.⁵⁴ There is also a Mauritius-registered company called Scorpion Minerals Processing International.⁵⁵

In December 2016, and in a sign of his newfound prominence within Gécamines, Scorpion's de Kock was briefly appointed by a local court as interim administrator of Tenke Fungurume (TFM), Congo's biggest and most important copper mine, during an ownership dispute.⁵⁶ Gécamines had petitioned for his appointment. The private owners of TFM fought back and the appointment was blocked by an appeals body.⁵⁷ Neither Gécamines nor de Kock responded to written questions about why Gécamines nominated him to lead Congo's most strategically important mine, or on Scorpion's sub-contracting agreement at Kamfundwa.

Whatever Yuma says, or even does, about relaunching Gécamines as a mining operator, the facts do not back up his words and the company continues its downward spiral. In 2012, Gécamines produced over 33,000 tonnes of copper according to EITI.⁵⁸ That year, it unveiled an ambitious relaunch plan at an annual mining summit in South Africa. According to the plan, the company would – among other goals – reach 100,000 tonnes of production by 2015.⁵⁹ In reality, Gécamines' copper production plummeted to 18,800 tonnes in 2015.⁶⁰ This was blamed on frequent power shortages, but then production fell again in 2016 to 14,260 tonnes. Power issues or not, the clear trajectory is downwards.⁶¹

Yuma has publicly defended the relaunch plans, but in his letter to Gécamines directors he concedes the “failures” of the three relaunch plans put in place during his six-year leadership. The board's efforts to relaunch Gécamines as a major mining operator have been “without convincing results to date”, he admits.⁶²

WHO'S PAYING GÉCAMINES?

Gécamines has turned from a straightforward mineral producer to a company that seeks to monetise its mining permits. That means that it strikes joint venture agreements with private mining companies which bring investment and knowhow to develop the mines. They pay Gécamines, sometimes tens of millions of dollars or more, for the right to develop and mine the land. In return, Gécamines receives a minority share of the project, which should produce dividend payments once the mine is profitable, as well as – in most cases – royalty payments from the mining project. Thus, Gécamines is now heavily reliant on payments from international companies.

Major Western companies are among those paying tens of millions of dollars each year to Gécamines. Given Gécamines' complete lack of transparency, and the close political connections of its chairman with President Kabila, Gécamines' international partners could be unwittingly funding parallel government structures. These companies must do more to ensure that the money they pay into Gécamines is not used for corrupt purposes. This puts companies in a potentially

difficult position. While the payments companies make to Gécamines under the terms of mining contracts are law are legitimate, these companies are likely to have concerns over whether Gécamines uses these revenues improperly.⁶³

Two mining projects owned by Western companies – US Freeport-McMoRan and Australia-based Tiger Resources – both paid more to Gécamines in 2014 than the state mining company passed on in total that year to the Congolese treasury.⁶⁴ In 2015 Freeport's project did so again, as did Chinese miner Huayou Cobalt Co.'s Congo Dongfang outfit.⁶⁵

There is a major risk that payments from these companies to Gécamines ultimately helped finance the Kabila regime, which has violated the Congolese constitution by remaining in power after the end of his second term. Kabila's forces met those campaigning to uphold the law with repression and violence.⁶⁶

We know that at least some of the \$110 million Tiger Resources paid Gécamines in 2014 to buy out its stake in Tiger's Société d'Exploitation de Kipoi (S.E.K.) mine was likely used to pay back a debt to President Kabila's close friend Dan Gertler's company, African Dawn. Gécamines financial accounts say that, “during the 2014 financial year, this loan [to Gertler's African Dawn Finance Ltd.] was fully repaid by means of the revenue from the sale of the shares in [Tiger's] Société d'Exploitation de Kipoi (S.E.K.) of approximately \$109.5 million”.⁶⁷

Global Witness wrote to these companies to ask about these payments and what steps they took to reduce the corruption risk posed by Gécamines. In response:

Tiger said that the company was “reviewing the questions that you have asked” and promised a fuller response, which had not been received by the time of publication.

Freeport did not answer the specific questions but said the payments made by the company to governments are “a significant contribution to national, regional and local development”. The company added that it is committed to the EITI and reports payments to governments in an annual report.

Huayou said that it has abided by Chinese and Congolese laws when investing and operating in Congo and carried out a “legal due diligence investigation” before buying an asset from Gécamines. The company said its lawyers were searching for “applicable laws so that a reasonable request of transparent financial management can be raised to Gécamines”.⁶⁸

These companies and others must demand that Gécamines publish audited annual accounts to ensure the funds they are providing are not used to personally enrich those at the top of Congo's institutions and government.

This shows why rules that require oil, gas and mining companies to publish clear and accurate details of their payments to governments and state agencies and companies, such as the EU Accounting and Transparency Directives and Section 1504 of US Dodd-Frank, are essential.

LEGALISED CORRUPTION AT THE TAX AGENCIES

Another major blocker to Congolese people benefitting fully from their mineral wealth is Congo's tax agencies. They fail to transfer over \$50 million of collected revenues to the treasury each year, and instead keep them back for their "own funds". A mining executive at an international company operating in Congo told Global Witness: "mining companies pay more tax than what is required by law but the treasury doesn't receive as much as it should because the rest is siphoned off somewhere."

EITI data indicates that private companies are paying millions into Congo's national tax agencies that they keep for their own undisclosed purposes. Over \$21 million of taxes paid by Glencore's two mines (called MUMI and KCC) in 2014 was not passed on to the treasury but was instead held on to by the national tax agencies. Of Freeport's 2014 payments, the national tax agencies

kept over \$8 million for their own funds. Freeport's response to question on this issue is printed in the previous section, while Glencore declined to comment. The agencies are opaque, often headed by powerful individuals with close professional or personal ties to the Prime Minister's office or to the Presidency, and the opacity around the withheld funds makes this system susceptible to corruption. A former mining executive with experience of Congo told Global Witness; "the guys at the heads of the tax agencies are all politically appointed. It's another way to move money up the chain. And if they don't send the money up, they get moved around and replaced."

The tax agencies can issue penalties to companies for violations of tax codes. These can sometimes be enormous, running to hundreds of millions of dollars. The agencies are permitted, by law, to keep a large percentage of any penalties received. Two of them are legally allowed to pass on a portion of these fines to their agents. Each agency also keeps five per cent of the total tax collected. (see Box 2 for other details of how the tax agencies use funds).

While the tax agencies' retention of part of the penalties is legal, it can also encourage and facilitate corruption. A tax inspection agent told a Global Witness researcher that the penalties had become the "private turf" of those at the top of the tax agencies – officials who rely directly on political patronage for their position. "Lowly tax officials are almost completely cut out of the bonuses from the fines by the top management", he said.⁶⁹ There is a genuine risk that the fines retained by the tax agencies are seized for personal use by high-ranking officials.





The three national tax agencies that collect mining revenues are known as DGI, DGDA and DGRAD (see Box 2 for explanation). Between them, they were allocated over \$800 million of central government funds to run their operations for 2016.⁷⁰ Despite this, the three agencies held on to an additional \$65.6 million of funds received from the mining sector from the Congolese treasury in 2015, according to EITI. None of the three tax agencies responded to requests for comment from Global Witness.

The legal framework allowing agencies to keep a percentage of fines has created a toxic pattern of behaviour among tax agents. In the former Katanga province, Global Witness was repeatedly told of illegal taxes and fabricated penalties being levied. The head of the Katanga branch of the Congolese business federation said that complex tax requirements were sometimes quietly changed in order to catch out companies and allow for further penalties to be imposed.

When contacted by Global Witness, a Kinshasa-based diplomat and two mining executives – one current and one former, both with experience in Congo – spoke of predatory behaviour by tax agents. All three sources said that companies were hit with huge fines that were often fabricated, and that much of what was paid by companies did not arrive in the treasury.

The redistribution of these penalty fees within each agency is extremely opaque. The system serves as a motivation for agents to seek out or fabricate infractions in the hope of improving the bonuses that top up their salaries, which are extremely low and only occasionally paid.

TAX MUST BE SIMPLIFIED

The former Kinshasa head of an international organisation with experience of working with the tax agencies told us that, “the Presidency has its [tax] agencies and people that provide funds, the Prime Minister its own.” The result is that the money is not available to help improve the lives of Congo’s people. “Congo’s taxation system is too fragmented. It needs to be simplified and centralised. All tax revenue needs to come into the treasury under the control of the Ministry of Finance.”

A public inquiry should be set up to investigate and publicly report on ways in which Congo’s tax collection can be simplified and made more efficient.

One option the inquiry should consider is whether the opaque agencies could be replaced with a single, central account into which all mining revenues are paid before being transferred out to the national budget. Payments into the account, and distribution of funds from it to the government budget, would have to be verified and publicly reported on regularly.

The simplification of tax-collection in Congo is extremely important. Mining companies have reacted with frustration to Congo’s efforts to revise its mining code and increase the rates companies have to pay to mine and export minerals. This is largely because companies feel they already pay too much in tax. The private sector hailed the decision to shelve the revision process in early 2016 after four years of talks. The

suspension of negotiations was especially disappointing as the proposed changes to the mining law included encouraging articles to improve transparency and accountability in the sector, although the bill included a worrying rollback on conflict of interest provisions.

Better governance and revenue management are hugely important for the long-term potential of Congo's mining sector to lift the country out of poverty. It is therefore vital that Congo's tax-gathering agencies operate with more transparency and accountability, get rid of fabricated penalties, and transfer more tax revenue to the treasury. In return, mining companies should remove their objections to the mining law revision process and seek again to collaborate with government and civil society in modernising and improving Congo's outdated mining code.

After a year of inaction, Kabila's office issued a March 2017 statement resolving to rapidly push through the new mining law. The government submitted a mining bill to parliament, which was unchanged from the 2015 version, but it had not become law at the time that this report was being finalised.

BUDGET TRANSPARENCY

Until last year, Congo had recorded an impressive GDP growth rate which reflected the health of the mining sector, but not the population. Since then, as commodity prices collapsed and Congo descended into political chaos, growth has slumped and inflation has risen sharply.

BOX 2: CONGO'S TAX AGENCIES HOLD MILLIONS BACK FROM THE TREASURY – AND IT MAY BE LEGAL

Known as	Full name	Focus	Percentage of fines recovered for 'own funds'
DGI	Direction Générale des Impôts	Collects direct and indirect taxes, including income and company tax	Can keep 50 per cent of fine monies recovered
DGDA	Direction Générale des Douanes et Accises	Deals with customs and excise duties	Can keep 50 per cent of fine monies recovered
DGRAD	Direction Générale des Recettes Administratives, Judiciaires, Domaniales et de Participations	Collects taxes and other payments on behalf of several other state institutions that have powers to levy fees	Can keep 40 per cent of fine monies recovered
DRKAT	Direction Provinciale des Recettes du Katanga	Provincial tax agency in Katanga, the copperbelt heartland of Congo's industrial mining sector. It receives taxes from public roads and drainage, from mining concentrate, the prefunding of contracts, and from tax on the surface area of a mining concession, and is authorised to hold onto its tax take.	N/A

One way to help fix this is for more of the taxes, royalties and other payments from mining companies to reach the treasury, rather than be absorbed into the state mining company and tax agencies. For this, a simplified, transparent and accountable tax system is necessary. However, even once the money reaches the treasury it also needs to be well-spent.

Congo's ranking in the "open budget index", which measures the volume and detail of budget information in over 100 countries, has improved over time. Nevertheless, it is still judged "minimal".⁷¹ Congo has improved its score in relation to creating the budget, but it has almost no follow up or monitoring of spending.

A former Kinshasa-based head of an international organisation with experience of working on public finances put it more bluntly: "Congo's budget is a work of fiction. All the country's spending needs to be in a budget that is voted on by the parliament."

Congo's Budget Ministry did not response to Global Witness's requests for comment.

Congo's revenues need to be maximised and must be spent where the need is greatest. The situation is critical: Congo has, for example, the third lowest health spending per person in the world, according to World Health Organisation data.⁷²

How 'own funds' can be used ⁷³	Head of Agency	Mining revenues withheld 2013-15	Mining revenues gathered 2013-15 ⁷⁴
Can use 80 per cent of fine revenues for working budget and as bonuses to agents	Sele YALAGHULI (ex-Chief of Staff to former Prime Minister Matata Ponyo)	\$53.2 million	\$1,276.7 million
80 per cent of its withheld fines should go to its working budget	Déo RUGWIZA MAGERA (widely rumoured to have family connections to Presidency)	\$104.5 million	\$1919.6 million
Can pass on 50 per cent portion of their fine revenues as bonuses to agents	Maguy SAMBI KIKUTWE (little publicly available information)	\$21.7 million	\$524.9million
N/A	Now replaced by four agencies following the division of Katanga into four new provinces in 2015.	\$398.8 million	\$398.8million

BOX 3: KINSHASA'S FAILURE TO SHARE WITH THE PROVINCES AND KATANGA'S HOME-GROWN TAX AGENCY

Away from Kinshasa, Congo's provinces and localities do not generally collect industrial mining taxes directly but are reliant on the central government to share part of the funds it collects.

Provinces and localities are collectively supposed to get 40 per cent of tax revenues. In reality, Kinshasa only sends a small percentage – much less than 40 per cent – back to the provinces. This convoluted system is known as 'retrocession'.⁷⁵

Analysis of EITI data carried out by research and advocacy group The Carter Center showed that in 2014 only around eight per cent of total state royalties from Katanga were returned to the province.⁷⁶

The failure of this retrocession system – and the perception that corrupt elites in Kinshasa are to blame for the missing money – has led to parallel systems of taxation at a provincial level. In Katanga, this was formalised into a provincial tax agency, known as DRKAT until Katanga province was divided into four separate provinces in 2015.

EITI data for 2013, 2014 and 2015 show that companies paid DRKAT \$130m, \$162m and \$107m, respectively, in various taxes, but provides no information on where these revenues went.

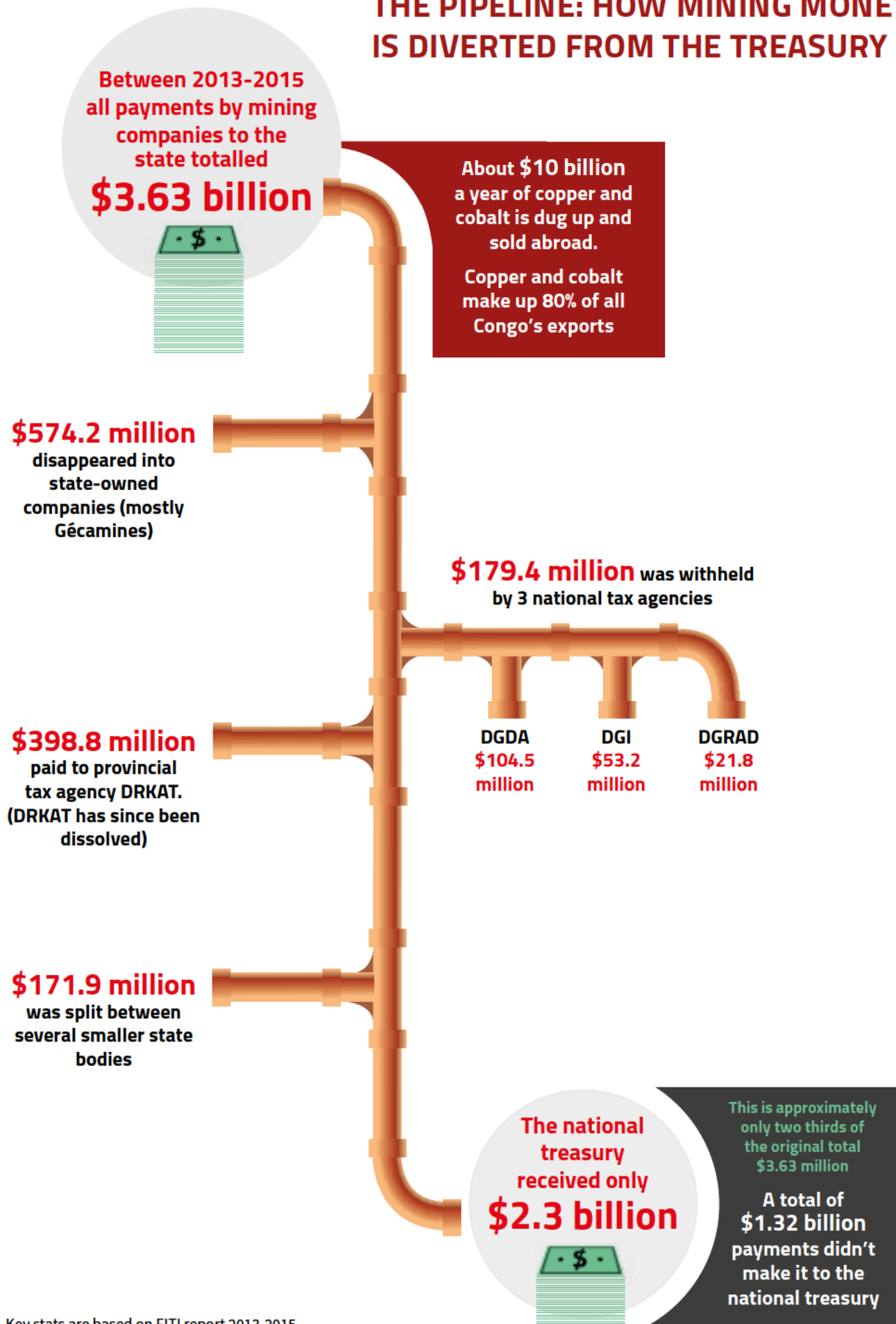
EITI says none of this reached Congo's national treasury, and it is unclear how much is used in the provincial budget, or for which services. However the failures of retrocession mean

that many Katangese see DRKAT's tax take as legitimate; DRKAT essentially cuts out a central government widely considered corrupt. One international mining executive told Global Witness that they could see that at least some of the money paid to DRKAT ended up in public spending, in contrast to payments to the national agencies. However, without transparent audits and accounts of the tax agencies and the provincial government we cannot know for sure how the money is used.

The inefficiencies of Congo's tax system also mean that local communities are left to rely on nearby mining projects to supply public goods and services that would normally be the responsibility of government. Mining companies reported paying \$47.5 million in social payments in 2014 and \$52.7 million in 2015 (half of all this money came from one mine; Freeport's TFM), according to EITI.⁷⁷ This is admirable, but it pales into insignificance next to the value of the mining sector. It also provides a crutch for an underperforming government, which should be providing schools, hospitals, roads and more via a fair system of taxation and public spending.

The negotiations over revisions to Congo's outdated 2002 mining code (see above), had led to a proposal whereby company contributions to local community projects would be formalised. In a draft bill, companies were to be allowed to offset a portion of their tax bill against contributions to local community projects. Companies had agreed to this in principle. They were to be able to offset expenditure on community projects up to a maximum of 0.3 per cent of turnover, but Congo's government, concerned at the potential loss of central tax revenue, reduced the maximum outlay they could offset to 0.1 per cent of turnover.

THE PIPELINE: HOW MINING MONEY IS DIVERTED FROM THE TREASURY



BOX 4: QUESTIONS OVER GROWING CHINESE INVOLVEMENT

The entry of state-backed and private Chinese mining companies into Congo's formal mining sector is a significant dynamic. An important presence has escalated into a dominant one since 2014. One of the most important recent transactions saw China Molybdenum and its partners buy Congo's biggest copper mine, Tenke Fungurume Mining, at the end of 2016 in an enormous \$3.8 billion deal. The mine had been majority-owned by US giant Freeport McMoRan, with Canadian company Lundin as a minority co-owner.

Gécamines fought a protracted battle over the transfer of ownership, demanding some form of compensation. It eventually dropped its objections in January after the parties involved agreed to pay the state company a fee. Freeport has revealed that it paid Gécamines \$33 million as part of this deal, while Bloomberg reports that Gécamines received \$100 million in total. At the time of writing, however, there is no transparency over precisely how much China Molybdenum or its partners paid, or – more pertinently – what Gécamines has spent the money on.⁷⁸

Another massive Chinese investment comes in the form of Congo's huge mining-for-infrastructure deal with a Chinese consortium of companies. The consortium controls 68 per cent of a joint-venture company called Sicomin, with the remaining 32 per cent held by Gécamines. This controversial 2007 deal provides for the Chinese consortium to loan Sicomin up to \$3bn to build infrastructure projects, and a further \$3.2bn for investing in a mining project. The loans are to be repaid through the mining profits made by Sicomin.

The copper mining project, located near Kolwezi in Lualaba province (formerly Katanga), finally started producing minerals in late 2015. Sicomin is exonerated from paying taxes until the consortium's investment in both infrastructure and mining project is paid back.

Local and international civil society has questioned whether the deal is good for Congo, and whether the infrastructure projects have in fact been constructed or are of an adequate quality.⁷⁹ In an ominous echo of the management of Gécamines, the Sicomin project operates with little to no ministerial or parliamentary oversight. It is led by Moise Ekanga, an individual who, like Yuma, has close ties to the Presidency and Kabila's inner circle. Close scrutiny of the project is vital as production at the Sicomin mine ramps up.

The loss of income for the Congolese treasury from the mining sector, as documented in this report, and the major consequential reduction in public spending, stands in opposition to China's support of the UN Sustainable Development Goals.⁸⁰ Moreover, the loss of spending on social needs runs counter to broader goals driving Chinese President Xi Jinping's flagship foreign investment policy, known as 'Belt and Road', which include managing natural resources in an equitable and sustainable manner and improving people's quality of life.⁸¹

The Chinese mining industry has made recent welcome efforts to promote more transparency practice among its members. This includes a call for companies to disclose payments to host governments in line with global transparency standards and within guidelines for overseas operations.⁸² However, more could be done by companies. For example, they could urge Gécamines and Congo's tax agencies to operate more transparently and accountably.

THE HUMAN COST

“I voted for Kabila [in 2006] because he spoke about relaunching Gécamines and I thought I would have an acceptable life. I thought my children would be able to find work.”

These are the words of a 76-year-old customary leader from a village near the Deziwa open-pit mine in Lualaba. Instead of finding secure jobs, most of his twenty children have taken to digging cobalt with hand tools and little oversight or safety measures. He notes: “ten years later, what a twist of fate!”⁸³

As Gécamines and many other major companies in the formal economy collapsed in the later days of Mobutu, many Congolese put into practice the widely talked about but mythical Article 15 of the constitution: “débrouillez-vous”, or “fend for yourself”. In her book on Mobutu’s reign, Michaela Wrong recounts a Belgian mine manager saying that, when Gécamines collapsed, “suddenly, everyone became a copper miner.”⁸⁴ Across

the former Katanga province it is estimated that up to 150,000 people, known as diggers or artisanal miners, dig cobalt and other minerals with basic tools and under poor conditions. As the formal economy collapsed around them, many communities in Congo have become reliant on artisanal mining for their income.

There is now good evidence that those occupying the highest positions of power in the country have sought to benefit financially from the men, women and children trying to salvage a livelihood from the wreckage of Gécamines.

During visits to the Katanga copperbelt region in November 2015, Global Witness heard reports of elite Presidential Guard soldiers (Garde Républicaine), who are supposed to protect the President, guarding a major artisanal mining site at Kasumbalesa on the Zambian border. In July 2016 BBC News reported testimony from diggers alleging that Presidential Guards had chased 10,000 miners away from another site.⁸⁵ Similarly, Bloomberg spoke to two diggers near Luisha in Haut Katanga who said that they worked for the presidential family under the control of Presidential Guards.⁸⁶ Taken together, it’s highly likely that the presidential family is directly benefiting from the dangerous work of those trying to scrape a living digging minerals.



Artisanal miners work at a cobalt mine-pit in Tulwizembe in the former Katanga province. © Reuters/Kenny Katombe 2015

A young internally displaced girl and her little sister stand in front of their family's temporary home in a camp for displaced people in eastern Congo. © Global Witness/Kate Holt 2008



A 2014 UNICEF study found that among the droves of diggers are tens of thousands of boys and girls. They earn only \$1-2 per day.⁸⁷ Primary education in Congo should be free according to the law, but due to a lack of funding from the Congolese state most schools charge parents monthly fees.⁸⁸ Children are often forced to work as their parents cannot afford to send them to school. Literacy rates between boys and girls are also hugely disproportionate. Only half of all girls between the ages of 15 and 24 can read and write compared to 80 per cent for boys of the same age.⁸⁹

It need not be this way. If more mining sector money reached the treasury – and then crucially the education budget – more girls and boys would have free schooling and an escape from the mines. As it is, the cycle of private wealth and public squalor continues.

Local communities living next to industrial mining operations can also suffer. They can be kicked off their land – which few have legal rights to – and many suffer the ill-effects of washing in and drinking polluted water. Girls are especially vulnerable to this. They are rarely able to get the more financially lucrative heavy work jobs around the mines, and are instead tasked with farming and washing clothes in the often polluted rivers.

POLITICAL CONSEQUENCES

In the midst of Congo's turmoil, there is an enormous opportunity. The country now produces more minerals than at any other time in its history. It has grown to become the largest copper producer in Africa, and the largest cobalt producer anywhere.

Copper's price on global markets slumped in 2015 down to under \$5,000 per tonne. The price crash served as an unwelcome demonstration of just how important copper is to Congo's economy. In 2016 the Congolese government was forced to slash its budget by 22 per cent, devastating public spending plans in a country already severely lacking in schools, hospitals, roads and other basic infrastructure.

By May 2017 the Congolese franc had lost half its value compared to a year earlier, inflation leapt to over 25 per cent in 2016, and GDP growth slowed.⁹⁰

However copper prices rallied in late 2016 and early 2017, reaching nearly \$6,000 per tonne at the time of publication. Cobalt prices rose 70 per cent in the first half of 2017 on the back of high demand for electric car



batteries. Congo's production of copper and cobalt, already at record highs, has boomed again at the start of 2017 as output of both minerals has risen by over 20 per cent in the first quarter of the year.⁹¹ If a price crash can cause such devastation, then a price rise (and a production boom) could have a strikingly positive impact on Congo's economy.

The country and its people can scarcely afford to miss out on further public funds. With President Kabila overstaying his second and final term in office, some have begun to see parallels with Mobutu's rule. The promise of elections delayed, the national conferences or dialogues, his refusing to abide by political agreements and attempting to split the opposition by unilaterally appointing a Prime Minister considered by his opponents to be unacceptable all seem eerily familiar.⁹²

The difference today is that the money looted from Gécamines comes largely from transfers from international mining companies, rather than sales of its own mineral production. Also, the listed companies operating in Congo often have Western investors and pensions tied up in their profits and risks.

Time is running out for Congo to get this right. Its natural resources wealth may be bountiful but it is also finite. Much more of the money from the mining sector needs to reach the treasury and be spent on improving Congo's education, health, transport and justice infrastructure, among other public spending priorities. While reporting to the EITI is an important move forward for transparency, it remains only a step towards the end goal of accountability and responsible management of natural resource revenues. More needs to be done to close down the gaps in Congo's revenue-collection system.

The alternative could be disastrous for the country. If money continues to be siphoned away into parallel networks of power, then Congo's political crisis is only likely to escalate. The continued mismanagement of revenues from mining companies is bound to discourage responsible investors from coming to, or staying in, the country. The result would be a shortfall in investment and the arrival of unscrupulous companies seeking to take advantage of Congo's weakened institutions.

RECOMMENDATIONS

As prices increase and huge mining deals are signed, it is more important than ever that the agencies and companies charged with gathering and transferring revenues from Congo's mining sector operate transparently and in the interests of the Congolese people. If they do not, then Congo's state auditors, donor governments, international mining companies and civil society must encourage and pressure them to do so.

Global Witness is calling for:

CONGOLESE GOVERNMENT

- The Ministry of Public Enterprises must hold Gécamines accountable for its sales, investments and management of public assets and funds. The Ministry must ensure that Gécamines responds to calls for greater transparency from other branches of government (particularly the Ministry of Mines, parliament, and the Prime Minister's office) as well as donors, International Financial Institutions (IFIs) and relevant international initiatives;
- The Ministry of Finance should take the lead in simplifying Congo's tax system;
- Congo's financial audit and investigation bodies, such as the Cour des Comptes and Inspecteur General de Finance, should be strengthened and properly financed.

CONGO'S PARLIAMENT

- Congo's parliament must undertake and publish an investigation into the finances and operations of Gécamines and the tax agencies;
- Parliament should insist on transparency around revenues withheld by tax agencies, including detailed annual accounts of what withheld funds are spent on and annual operation expenses.

GÉCAMINES

- Gécamines must publish annual audited financial accounts, including details of revenues (including dividends and asset sales), spending and contributions to the government and its investment programmes;
- Gécamines must publish all contracts within 60 days, as dictated by Congolese law. These should include, but not be limited to; asset sales, joint-ventures and subcontracting arrangements as well as any deals or amendments that materially affect existing contracts.

INTERNATIONAL GOVERNMENTS & MULTILATERAL DONORS TO CONGO

- Bilateral donors need to coordinate and exert diplomatic pressure on Congo's government and relevant ministers and officials to ensure that more of Congo's mining revenues reach the treasury and are properly spent. This would include, but not be limited to, supporting audits of tax agencies, Gécamines and the budget;
- The International Monetary Fund and World Bank should ensure that future financial assistance/programming for Congo is contingent on improved management of Congo's mining revenues, notably Gécamines publishing annual audited financial reports;
- The United States and European Union should extend sanctions to financiers of the regime.

INTERNATIONAL MINING COMPANIES IN CONGO

- Large corporations that pay significant taxes to Gécamines and the tax agencies must demand that Gécamines publish audited, annual accounts to ensure the funds they are providing are not used to personally enrich those at the top of Congo's institutions and government;
- Investors in these companies must pressure management to ensure that they are not making payments into Congolese agencies that they know to be major corruption risks.

EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

- At an international level, EITI should implement a standardised format or template for its country reports, allowing for straightforward comparison of data between years and across borders;
- At a local level, Congo's EITI Secretariat must push strongly for Gécamines and private companies to declare all revenue streams between the parties, including but not limited to dividends, royalties, assets sales, signature bonuses, consultancy fees and other services. Where any party has failed to declare a payment or receipt, or where a revenue stream does not exist (for example, dividends from Gécamines to the state), that should be clearly marked in the report.

ENDNOTES

1 Claude's name has been changed to protect his identity. Original French: "Soit l'Etat n'existe plus, soit il est prédateur."

2 Original French: "Malgré une forte présence des entreprises minières, nos souffrances augmentent au quotidien."

3 Unicef data on Democratic Republic of Congo: <https://data.unicef.org/country/cod/>

4 Reuters, 'UPDATE 1-Congo copper production to hold steady in 2015 - mines ministry', 15 October 2015: <http://uk.reuters.com/article/congodemocratic-mining-copper-idUKL8N12F2PK20151015>

5 Washington Post, 'The Cobalt Pipeline', 30 September 2016: <https://www.washingtonpost.com/graphics/business/batteries/congo-cobalt-mining-for-lithium-ion-battery/>

6 Global Witness, 'Out Of Africa', May 2016: <https://www.globalwitness.org/en/campaigns/conflict-minerals/out-of-africa/>

7 The Africa Progress Panel's 2013 report, p.101

8 "The former Katanga province" is used to refer to the province as an administrative entity, because in mid-2015 Congo decentralised provincial authorities and increased the number of provinces from 11 to 26. What had been Katanga was divided in four, creating the new provinces of Haut Katanga, Lualaba, Tanganyika and Haut Lomami. However, much of the data discussed in this report relates to the period when Katanga was still a single province.

9 Where possible, Global Witness compared and corroborated mining sector payment data across different sources. For example, a sector-wide datasheet produced by Congo's Comité Technique de suivi et évaluation des Réformes corroborated EITI valuations of copper and cobalt exports, and valued the mining sector's direct contribution to the budget in 2013 at \$586.6m – around \$10m off EITI's figure. However the same document estimated the direct budget contribution in 2014 at \$830m – higher than EITI's \$761.2m figure. Elsewhere, quarterly receipts reports for the extractives sectors published by the Ministry of Finance tally with headline mining revenues data in EITI. The quarterly reports break down earnings

each month as reported by the tax agencies. While the data for 2015 is still not fully published, the 2014 quarterly reports, which include VAT but do not include state-owned mining company earnings, come to a total of over \$980m. EITI's figure for mining payments received by the tax agencies in 2014 comes to just over \$1 billion (see EITI 2014 report for Congo, p. 9). If DRKAT earnings are excluded this drops to just over \$883m, but it is unclear whether or not DRKAT receipts are included in the Ministry of Finance data. Overall, EITI provided the most complete dataset and in most cases was broadly in line with the data available from other sources.

10 EITI 2014 (p. 65) report says that the exportation value of copper for 2014 was 6,967,871 million Congolese Francs and the exportation value of cobalt for the same year was 2,130,045: a total of 9,097,916 million Congolese Francs. At an exchange rate of \$1 = CDF 922.769 (from 31 December 2014, accessed at: <http://www.xe.com/currencytables/?from=CDF&date=2014-12-31>) this was worth \$9.859 billion.

11 Different figures for mining sector revenues appear in the 2013-2015 EITI reports, depending on whether or not flows of payments for Value Added Tax (VAT) are included in the statistics. The EITI took those payments into account for its work reconciling the payment declarations by companies and state agencies, but did not consider VAT payments in determining the revenues of the extractives sectors (see p. 12, EITI report DRC 2014). Global Witness has used the figures that do not include VAT, which should be reimbursed to companies. Total payments to government including VAT would be higher. To calculate mining sector revenue each year, Global Witness added EITI figures for mining companies' contributions to the budget (including state-owned company contributions), funds withheld by tax and government agencies, and funds paid into state-owned enterprises. To avoid double counting, we have subtracted any tax payments (both those that reached the treasury and those withheld by tax agencies) by state-owned companies from the reported figures in EITI for the revenues of those companies. We have also separated figures for the provincial tax agency, DRKAT, and for smaller government agencies (which EITI reports together as "other" beneficiaries) from those of the three national tax agencies. This allows for two different figures for withheld funds: one which includes DRKAT and the smaller government agencies, and one which just refers to the national tax agencies and state-owned companies. We left corporate social responsibility payments out of these calculations, as this is money that is – ostensibly at least – already flowing to the Congolese people. The breakdown of figures is as follows, figures shown in millions of US dollars:

Year	Company payments that reached the treasury	Funds withheld by national tax agencies	Funds withheld by state-owned companies	Total withheld by national tax agencies and state-owned companies	Funds withheld by provincial tax agency, DRKAT	Funds withheld by smaller government agencies and others**	Total withheld including provincial and other government agencies
2013	575.7	52.6	95.9	148.5	129.6	70.2	348.3
2014	761.2	61.2	253.2	314.4	162.4	48.2	525
2015	967.8	65.6	225.1*	290.7*	106.8	53.5	451*
Total	2303.1	179.4	574.2*	753.6*	398.8	171.9	1324.3*

Year	Total mining revenues	Percentage of mining revenues withheld by national tax agencies and state-owned companies	Percentage of mining revenues withheld in total
2013	924	16%	37.7%
2014	1286.2	24.4%	40.8%
2015	1418.8	20.5%	31.8%
Total	3629	20.8%	36.5%

* These figures include \$83.5m royalty and signature bonus payments originally due to Gécamines which were in fact redirected to a Canary Islands company ultimately owned by Dan Gertler, a close friend of Congo's President Joseph Kabila. These payments are included here as they are funds which did not reach the treasury. See Box 1 for further details.

** This includes monies paid for a Taxe Promotion de l'Industrie (FPI), Fonds National d'Entretien Routier (FONER) and payments to provincial bodies, SAESSCAM and the Office Congolais de Contrôle (OCC) among others. See DRC EITI report 2014, Annex 14, and DRC EITI report 2015, Annex 15, for more information.

12 Senegal (92.8 per cent), Cameroon (92.9 per cent), Togo (99.7 per cent). See Zambia EITI Report 2014, p.6; Senegal EITI Report 2014, p.14; Cameroon EITI Report 2014, p.8; Togo EITI Report 2013, p.8.

13 Global Witness, 'Congo signs over potential \$880m of royalties in Glencore project to offshore company belonging to friend of Congolese President', 15 November 2016: <https://www.globalwitness.org/en/press-releases/congo-signs-over-potential-880m-royalties-glencore-project-offshore-company-belonging-friend-congolese-president/>; Global Witness, 'Glencore redirected over \$75 million in mining payments to scandal-hit friend of Congolese President, Global Witness reveals', 3 March 2017: <https://www.globalwitness.org/en/press-releases/glencore-redirected-over-75-million-mining-payments-scandal-hit-friend-president-global-witness-reveals/>

14 DRC EITI Report 2015, p. 96.

15 Stefaan Marysse and Claudine Tshimanga, 'La renaissance spectaculaire du secteur minier en RDC : ou va la rente minière?' in 'Conjectures congolaises 2012', p. 17.

16 Augustin Katumba Mwanke, 'Ma Vérité', pp. 38-39. Original French: "On respirait de la Gécamines. On vivait de la Gécamines. On rêvait de la Gécamines... Je ne rêvais que d'une chose : devenir... directeur général de la Gécamines. L'idole, le modèle, le sphinx de mes fantasmes".

17 Michaela Wrong, 'In the Footsteps of Mr. Kurtz', May 2002, p. 109.

18 Ibid., p. 111.

19 Congo Central Bank annual report 2011, p. 48. http://www.bcc.cd/downloads/pub/rapann/Rapport_annuel_2011_bcc_RDC.pdf

20 In 2014, EITI reported that Gécamines paid \$11.6m into the budget and a further \$3.9m of the company's payments were withheld by tax agencies for their own funds. The same EITI report shows Gécamines' declared earnings as \$265m: only 4.4 per cent of this ended up in the state budget. In 2015 the EITI report showed that Gécamines paid \$13.6m into the budget and a further \$8.3m of the company's payments were withheld by tax agencies for their own funds, while Gécamines' declared earnings were \$249.5m, so only 5.5 per cent of earnings ended up in the budget according to these figures.

21 Congo Central Bank annual report 2014, p. 92. 2014 receipts reported as 4.362, 7bn Congolese francs, or \$4.7bn (using exchange rates from 31 December 2014 (\$1 = CDF 922.769) from here: <http://www.xe.com/currencytables/?from=CDF&date=2014-12-31>).

22 Interview with Global Witness researcher, October 2016. Original French: "Il faut oublier la Gécamines mon frère. C'est une coquille vide. Le pillage se fait à ciel ouvert. Les décisions viennent du sommet et nous ne pouvons rien."

23 Interview with Global Witness researcher, October 2016. Original French: 'Lorsqu'il [Yuma] parle des exploits de la Gécamines avec les différents plans conçus, en clair, il est content des gains réalisés par une poignée d'oligarques mafieux qu'il représente. Il est utilisé pour enrichir ses maîtres et s'enrichir lui-même.'

24 Africa Business Magazine, 'Interview with Albert Yuma, President of Gécamines', November 2013: <http://africanbusinessmagazine.com/uncategorised/albert-yuma-president-of-g%C3%A9camines/>; Radio France Internationale, 'Portrait : Albert Yuma Mulimbi, l'hyperactif', 31 May 2015: <http://www.jeuneafrique.com/237560/economie/portrait-albert-yuma-mulimbi-lhyperactif/>

25 Forum Des As, 'Jean Kimbembe fait confiance à Texaco pour habiller le personnel technique de la SCTP', 2 August 2016: <http://forumdesas.org/spip.php?article8425>. In this article the director of Texaco says the company has delivered uniforms to Congo's army. Original French: "Nous avons ensuite livré des tenues vertes aux Forces armées de la RDC."

26 Interview with Global Witness researcher, October 2016. Original French: 'Mais à cause de ses connexions politiques avec le régime en place, il a été pistonné à la tête de la Gécamines... Yuma ne rend compte qu'au président de la République.'

27 Bloomberg, 'Democratic Republic of Congo Says It May Still Revise Mine Code', 11 February 2016.

28 Fédération des Entreprises du Congo, 'DRC Chamber of Mines hails 2002 code retention / La Chambre des Mines accueille favorablement la rétention du code minier de 2002', 10 February 2016.

29 Bloomberg, 'Gécamines Sale of Congo Copper Assets May Undermine Share Offer', 13 July 2011.

30 For a more detailed analysis of the transformation of Gécamines into a commercial operation and other issues related to the company, see Natural Resource Governance Institute, 'Copper Giants', April 2015: <https://resourcegovernance.org/analysis-tools/publications/copper-giants-lessons-state-owned-mining-companies-drc-and-zambia-0>

31 Le Soir, 'Corruption au Congo: les preuves qui accablent le régime Kabila', 29 October 2016: <http://www.lesoir.be/archive/recup%3A%252F1354761%252Farticle%252Factualite%252Fmonde%252F2016-10-29%252Fcorruption-au-congo-preuves-qui-accablent-regime-kabila>

32 New York Times, 'As President Joseph Kabila Digs In, Tensions Rise in Congo', 17 December 2016: https://www.nytimes.com/2016/12/17/world/africa/congo-joseph-kabila-corruption.html?_r=0

33 There are further details given in the accounts about the three payments which all occurred before 31 December 2014. In the first payment, for which no date is given, \$30m was credited to the "fiscal current account" related to a note from the Governor of the Central Bank. The second payment of \$30m dated 31 August 2012 was made by Cabinet Liedekerke the beneficiary is not named. The third payment of \$7m dated 20 August 2013 was made to the "account of the public treasury at Rawbank". An investigative report published by the ICIJ based on the Panama Papers leak claims that Rawbank manages a number of "Kabila projects" and that its role is to "ensure that due diligence... can take place through a private sector actor and that the bar the bar leans towards political, and not regulatory, standards" (<https://panamapapers.investigativecenters.org/drc/>). All quotes above are authors' translations from original French: « La valeur à recevoir USD 100,8 millions au 31 est constituée essentiellement de : Un paiement de USD 30 millions à imputer sur le compte courant fiscal confirmé par la note du Gouverneur de la Banque Centrale no V-GOUV/E 000 34 ; Un deuxième paiement en date du 31 août 2012 d'USD 30 millions effectué par le Cabinet Liedekerke pour compte GÉCAMINES avec mention à valoir sur la fiscalité GÉCAMINES ; USD 7,00 millions versée au compte du Trésor Public auprès de la RAWBANK avec mention à valoir sur la fiscalité en date du 20 août 2013... »

34 Even if the Liedekerke payment was credited in 2013, it is still far higher than Gécamines' reported \$18.7 million of tax payments that year, as declared to EITI.

35 Le Soir, 'Corruption au Congo: les preuves qui accablent le régime Kabila', 29 October 2016: <http://www.lesoir.be/archive/recup%3A%252F1354761%252Farticle%252Factualite%252Fmonde%252F2016-10-29%252Fcorruption-au-congo-preuves-qui-accablent-regime-kabila>

36 Ibid.

37 The EITI regulations require declarations of dividends paid to state enterprises by their project partners. These declarations are supposed to be made by both the state companies and the private partners in the joint ventures. The EITI Standard (for 2013 and the latest 2016 version) require disclosure of specific revenue streams as outlined in requirement 4.1(b) (p. 26 in 2013, p. 23 in 2016) – this list of revenue streams includes dividends. The standard also requires (4.2(c) in 2013 and 4.5 in 2016) that material payments to state-owned enterprises are recorded, as are any transfers from state-owned enterprises to other government agencies, which should cover the payment of dividends by Gécamines to the treasury or Ministry of Public Enterprises.

38 The EITI reports reviewed by Global Witness break down Gécamines' sources of income from each of its joint-venture partners, and describe revenue streams such as 'royalties', 'service provision', 'asset sales' and 'consultancy fees'; nowhere do they list 'dividends', implying that no dividends are paid. Only in the 2015 EITI report are dividend payments mentioned. The report shows, on p. 78, that private mining companies initially declared having paid \$6.4m in dividends to the state-owned companies. The state-owned companies report no receipts, and in the reconciliation round the private partners fall into line: ultimately, the 2015 report shows zero dividends paid to state mining companies. This reconciliation process is not explained in detail in EITI and represents a crucial weakness in the initiative see box 1.

39 The category “revenues from partnerships” may cover several different revenue streams including royalties, signature bonuses, consultancy fees, service charges or, perhaps, dividends

40 See article 45 (‘Paiement des dividendes’) in Gécamines’ statutes, which explains, inter alia, that the board is responsible for determining the method and form of dividend payments: http://Gécamines.cd/status_coordonnes.pdf,

41 The 2014 financial accounts report revenues of over \$539m, but losses of \$622m mean an overall loss in 2014 of \$83m.

42 EITI payment declarations include the vast majority of taxes levied in Congo (so any taxes not covered by EITI would still not explain a \$55m discrepancy). Elsewhere in the Gécamines accounts it is stated that the government owes Gécamines \$49.5m; perhaps this was deducted from its tax bill. There is nothing in the document to confirm this.

43 Original French: “La maniere dont on gère ces fonds laisse à désirer par ce qu’il n’existe aucun mécanisme de contrôle (interne ou externe) a la Gécamines. Conséquences, les DG et le PCA gèrent la Gécamines comme leurs biens privés en complicités avec certains conseillers à la Présidence.”

44 Radio Okapi, ‘Lubumbashi: des agents de la GÉCAMINES réclament 10 mois d’arriérés de salaire’, 29 November 2016: <http://www.radiookapi.net/2016/11/29/actualite/societe/lubumbashi-des-agents-de-la-Gécamines-reclament-10-mois-darrieres-de>

45 Radio Okapi, ‘Kolwezi : les agents de la Gécamines réclament 3 mois de salaire’, 16 June 2014: http://www.radiookapi.net/actualite/2014/06/16/kolwezi-greve-la-Gécamines/#.U5_9HRbzbzl

46 Original Swahili: ‘Malali, ma njala, hapa tuko na cinq jours, hatukule... Batoto, bana ba fukusha mu masomo, mu examen, habafunde. Makuta ya kulipa ku masomo, hatuna.’

47 Original Swahili: ‘Gécamines yee ni l’Etat... ile franka ni franka yetu, sasa hapa, balisha ku bloquer. Manaake hakuna kitu tena.’

48 The response by Matata Ponyo was carried by several media outlets, quoting an official press release, for example: Le Potentiel, ‘Bataille rangée entre la FEC et le gouvernement’, 31 May 2016: https://www.lepotentielonline.com/index.php?option=com_content&view=article&id=14609:bataille-rangee-entre-la-fec-et-le-gouvernement&catid=85&Itemid=472; full text of the official press release: <http://www.congoactuel.com/2016-05/situation-economique-du-pays-le-gouvernement-recadre-yuma>; Original French: ‘Depuis près de 6 ans que le président de la FEC est à la tête de la Gécamines comme président du Conseil d’administration, cette entreprise publique n’a enregistré que des contreperformances... l’ensemble des Congolais perdaient plusieurs centaines de millions de dollars américains à cause de la mauvaise gouvernance de la Gécamines. Près de 100 millions de dollars américains devraient être accordés par la BAD à la RDC au titre de don en 2011. Cela n’a pu être possible à cause de la Gécamines... Un président du Conseil d’administration d’une entreprise publique en déficit chronique de gouvernance peut-il donner des leçons au Gouvernement, son actionnaire unique ?’

49 Radio France International, ‘Albert Yuma Mulimbi, grand invité de l’économie, veut reprendre le contrôle du secteur minier (RDC)’, 10 September 2016: <http://www.rfi.fr/emission/20160910-albert-yuma-mulimbi-grand-invite-economie>

50 Letter from Yuma to Gécamines directors (‘Les Grands Directeurs Hiérarchiques’), 27 July 2016. Original French: ‘La filière Kamfundwa, sur laquelle nous misons à l’horizon 24 mois nos principaux espoirs...’

51 Ibid. Original French: ‘Le personnel d’encadrement a exprimé à la délégation du Conseil d’Administration un certain nombre d’interrogations liées à un projet sur lequel il n’a pas été assez informé. Cette catégorie du personnel a fait part d’une certaine surprise, parfois d’inquiétudes, qui sont compréhensibles.’

52 Ibid. Original French: ‘sachez que ceux, quel que soit leur niveau, qui n’assumeront pas correctement leurs obligations professionnelles, seront sanctionnés immédiatement car personne ne doit ralentir ou entraver notre redressement.’

53 Notes from a meeting of Gécamines board members and strategic committees, 5 July 2016. Original French: ‘L’Administrateur tient à préciser les choses de manière

claire afin que tous soient informés de l’organisation qui allait prévaloir durant les 24 prochains mois. SMP [Scorpion Minerals Processing] et ses équipes vont prendre la gestion des sites concernés et en seront les seuls responsables... Les entités GCM [Gécamines] comme DCE [Division de Contrôle de l’Exploitation], AI [l’Audit], GEO, ACP continueront à jouer leur rôle habituel mais sans aucune entrave à la marche de la filière... GCM continuera à assumer comme par le passé toutes ses responsabilités fiscales et parafiscales vis-à-vis de la DGI, de la DGRAD, de la DGDA et des différents services provinciaux d’assiettes. En fait, SMP, n’agit qu’en tant que délégué de GCM en ce qui concerne les commandes des services, des équipements ou des prestations, le client final étant dans tous les cas GCM, qui par ailleurs, avalisera toute offre ou commande présentée par SMP lui soumise par le comité de pilotage.’

54 According to South African company records accessed in January 2017, Stephanus De Kock is a director of Scorpion Mineral Processing, registered in December 2009 and voluntarily liquidated in December 2015; Scorpion Mineral Processing Electrical, registered August 2011, as of December 2016 was in “non compliance” with its annual return and “in process of deregistration”; Scorpion Mineral Processing Coal, registered in January 2012 and still active.

55 <http://mauritiuscompanies.net/en/scorpion-mineral-processing-international-ltd.236713.company.v2>

56 Gécamines had sought an administrator for TFM as it fought a protracted battle over a transfer of ownership of the project, from US mining giants Freeport McMoRan to the Chinese company China Molybdenum. De Kock’s stint was short-lived after the owners of the mine objected to the nomination and Gécamines eventually withdrew its opposition to the transfer of ownership in January 2017: Bloomberg, ‘Tussle Over Freeport Mine Sale Escalates in Congo Court Case’, 8 December 2016: <https://www.bloomberg.com/news/articles/2016-12-08/congo-court-appoints-administrator-to-run-former-freeport-mine>; Reuters, ‘Congo blocks Tenke mine administrator appointment’, 9 December 2016: <http://af.reuters.com/article/drcNews/idAFL5N1E42JA>; Bloomberg, ‘Congo Miner Said to Get \$100 Million to Clear China Moly Buy’, 22 February 2017: <https://www.bloomberg.com/news/articles/2017-02-22/congo-said-to-get-100-million-to-clear-china-moly-mine-purchase>

57 Reuters, ‘Congo blocks Tenke mine administrator appointment’, 9 December 2016: <http://af.reuters.com/article/drcNews/idAFL5N1E42JA>

58 DRC EITI 2012 report, pp.171-172, total Gécamines production shown as 48,676 tonnes.

59 Gécamines relaunch plan presentations, for example: http://Gécamines.cd/indaba_francais.pdf / http://Gécamines.cd/indaba_anglais.pdf ; http://www.mines-rdc.cd/fr/documents/Gcm_Strategic_Plan_2012.pdf

60 Bloomberg, ‘Congo State Copper Producer Plans Fivefold Output Increase’, 17 June 2016: <https://www.bloomberg.com/news/articles/2016-06-16/congo-state-copper-producer-plans-for-five-fold-output-increase>

61 Bloomberg, ‘Congo Miner Said to Get \$100 Million to Clear China Moly Buy’, 22 February 2017: <https://www.bloomberg.com/news/articles/2017-02-22/congo-said-to-get-100-million-to-clear-china-moly-mine-purchase>

62 Letter from Yuma to Gécamines directors (‘Les Grands Directeurs Hiérarchiques’), 27 July 2016. Original French: « Tirant le leçon des échecs de trois précédents plans de relance mis en place au cours de six dernières années... » « Cela fait en effet 6 années que le Conseil d’Administration cherche à permettre à Gécamines de redevenir un grand opérateur minier en affectant des moyens important à un certain nombre de réhabilitations, mais sans résultat probant à ce jour. »

63 Global Witness, ‘Guest blog: Is corruption defined solely within the boundaries of what is legal?’, 9 December 2016: <https://www.globalwitness.org/en/blog/guest-blog-corruption-defined-solely-within-boundaries-what-legal/>

64 According to EITI, Gécamines paid around \$15 million to the state in 2014. Freeport’s TFM mine declared having paid \$19.7 million to Gécamines, a surplus of \$4.7 million. Tiger’s SEK project said it had paid \$114.2 million to the state-owned mining company, meaning Gécamines held on to at least \$99.2 million of the company’s payments that year.

65 According to the EITI report for 2015, Gécamines declared total payments to government of approximately \$21.8 million. Huayou’s CDM project said it had paid Gécamines \$52 million – a surplus of \$30.2 million. Freeport’s TFM said it had paid \$22.7m to Gécamines – leaving the latter with a little under a million dollars surplus.

- 66** Reuters, 'Congo anti-government march turns violent in capital, 17 dead', 19 September 2016 : <http://www.reuters.com/article/us-congo-politics-idUSKCN11P0R6> ; Reuters, 'Almost 300 arrested as anti-president protests subside in Congo', 21 December 2016: <http://uk.reuters.com/article/uk-congo-politics-idUKKBN14800E>
- 67** Global Witness translation from the original French in the Gécamines company accounts: "au cours de l'exercice 2014, cet emprunt a été totalement apuré au moyen des recettes issues de la cession des parts dans la société d'exploitation de Kipoi (S.E.K.) de l'ordre de USD 109,5 millions."
- 68** Global Witness translation from the original Chinese.
- 69** Interview with Global Witness researcher, October 2016. Original French: 'Un autre problème des régies financières, c'est le «principe d'aviseur» qui consiste à récompenser l'agent qui détecte et dénonce la fraude. La loi prévoit que cet agent touche 20% du montant payé par l'opérateur économique fraudeur à titre d'amende. Cependant, cette disposition devient la « chasse gardée » des inspecteurs des finances qui dépendent directement de la présidence de la République. A ce sujet, les agents de terrain sont presque écartés des primes dues aux amendes au profit des hauts cadres.'
- 70** Congo's projected budget spending for 2016 ("LOI DE FINANCES N°15/021 DU 31 DECEMBRE 2015 POUR L'EXERCICE 2016"), published at the end of 2015 and based on the previous 12 months of expenditure, forecasts central budget allocations of approximately \$70m for the DGRAD and \$100m for the DGDA, both of which are dwarfed by the \$650m put aside for the DGI (calculated using exchange rate for the Congolese Franc from 31 December 2015: \$1 = CDF925.5). It is likely that not all of these funds were transferred to the tax agencies.
- 71** In the 2015 Open Budget Index Congo scored 39 out of 100, compared with 18 out of 100 in 2012 and 1 out of 100 in 2008: <http://www.internationalbudget.org/wp-content/uploads/OBS2015-CS-Democratic-Republic-of-Congo-English.pdf>
- 72** In 2014, the most recent year statistics are available, Congo spent \$19 per capita on health. Only Central African Republic and Madagascar spent less. See World Bank data: <http://data.worldbank.org/indicator/SH.XPD.PCAP>.
- 73** DGI regulations covered by decree 017/2003 of 2 March 2003. DGDA by decree 09/43 of 3 December 2009. DGRAD by decree 00/59 of 7 December 1995.
- 74** DRC EITI Reports 2013, 2014 and 2015.
- 75** This retrocession principle applies to national taxation (40 per cent) and to mining royalties payable to the state (as opposed to those royalties that are payable to Gécamines), where 25 per cent should be returned to the province of origin and 15 per cent the local government unit which houses the mine.
- 76** The Carter Center, 'Improving Governance of Revenues of the Mining Industry', February 2017: http://www.congomines.org/system/attachments/assets/000/001/220/original/TCC_EIGP_REV_Improving_Governance_of_Revenues_-_Cross-Cutting_Lessons_%28....pdf?1487024488 ; and DRC EITI 2014 report, p. 98.
- 77** DRC EITI Report 2014, p.96 and DRC EITI report 2015, p. 91.
- 78** Bloomberg, 'Congo Miner Said to Get \$100 Million to Clear China Moly Buy', 22 February 2017 : <https://www.bloomberg.com/news/articles/2017-02-22/congo-said-to-get-100-million-to-clear-china-moly-mine-purchase>
- 79** Radio Okapi, 'L'Asadho dénonce la «surfacturation» des travaux publics à Kinshasa', 18 February 2015: <http://www.radiookapi.net/actualite/2015/02/18/lasadho-denonce-la-surfacturation-des-travaux-publics-kinshasa> ; Global Witness, 'Friends in Need', March 2011: https://www.globalwitness.org/sites/default/files/library/friends_in_need_en_lr.pdf
- 80** Ministry of Foreign Affairs of the People's Republic of China, "Declaration of the Johannesburg Summit of the Forum on China-Africa Cooperation", website of the Forum on China-Africa Cooperation, 25 December 2015, http://www.focac.org/eng/ltida/dwjbjzjhys_1/hywj/t1327960.htm, accessed 12 June 2017.
- 81** Ministry of Foreign Affairs of the People's Republic of China, "Joint Communiqué of the Leaders Roundtable of the Belt and Road Forum for International Cooperation", 16 May 2017, http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1462012.shtml
- 82** Chinese Chamber of Commerce for Minerals, Metals and Chemicals Importers and Exporters, Guidelines for Social Responsibility in Outbound Mining Investments, published October 2014, available here: <http://www.globalwitness.org/sites/default/files/library/cccmc%20guidelines%20for%20social%20responsibility%20in%20outbound%20mining%20investments%20oct%202014%20ch-en.pdf>
- 83** Interview with Global Witness researcher, October 2016. Original French: « J'ai voté Kabila parce qu'il parlait de la relance de la Gécamines et je m'attendais à une vie acceptable. Je croyais que mes enfants auraient du travail. Dix ans après, ironie du sort ! »
- 84** Michaela Wrong, 'In the Footsteps of Mr. Kurtz', May 2002, p.112.
- 85** BBC, 'Why Congo miners fear President Kabila's guards', 30 June 2016 : <http://www.bbc.co.uk/news/world-africa-36671661>
- 86** Bloomberg, '<https://www.bloomberg.com/news/features/2016-12-15/with-his-family-fortune-at-stake-congo-president-kabila-digs-in>', 15 December 2016: <https://www.bloomberg.com/news/features/2016-12-15/with-his-family-fortune-at-stake-congo-president-kabila-digs-in>
- 87** Amnesty International, 'Democratic Republic Of Congo: "This is what we die for": Human rights abuses in the Democratic Republic of Congo power the global trade in cobalt', January 2016: <https://www.amnesty.org/en/documents/afr62/3183/2016/en/>
- 88** <https://www.amnesty.org/en/documents/afr62/3183/2016/en/>
- 89** DRC youth (15-24 years old) literacy rates 2008-2012 – male 78.9%, female 53.3%. See: <https://data.unicef.org/country/cod/>
- 90** Reuters, 'UPDATE 1-Congo revises 2017 GDP growth forecast to 3.5 pct from 4.9 pct', 26 May 2016: <http://uk.reuters.com/article/congo-economy-idUKL8N1S4ND> ; Reuters, 'Congo cbank revises 2017 GDP growth down to 3.1 pct', 19 June 2017: <https://www.reuters.com/article/congo-economy-gdp-idUSL8N1JG31A>
- 91** Reuters, 'UPDATE 1-Congo Q1 copper production jumps over 20 pct yr-on-yr', 3 May 2017: <http://af.reuters.com/article/drcNews/idAFL8N1I56BR>
- 92** Reuters, 'Deja vu in Congo as President Kabila clings to power', 2 October 2016: <http://www.reuters.com/article/us-congo-politics-idUSKCN1220CJ> ; Reuters, 'Congo's Kabila names opposition figure Tshibala prime minister', 7 April 2017: <http://www.reuters.com/article/us-congo-politics-idUSKBN1792XE>



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