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THE SCRAMBLE FOR AFRICA'S OIL, GAS AND MINERALS

A report by Global Witness – January 2012

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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SUMMARY

THE SCRAMBLE FOR AFRICA'S OIL, GAS AND MINERALS

The intensifying competition for commercial access to the world's remaining deposits of oil, gas and minerals brings with it a serious risk of exacerbating corruption and violent conflict. Such corruption can prop up autocratic governments that keep their people in poverty while enriching elites and the international companies that are willing to do business with them. The first step towards tackling the problem is to shine the light of public scrutiny on the complex and often opaque relationship between extractive companies and states.

There is growing international awareness of the need for greater transparency in the extractive industries as a vital first step towards tackling the "Resource Curse". The Extractive Industries Transparency Initiative (EITI), a global association of governments, companies, investors and civil society groups (including Global Witness), has more than 30 countries implementing its rules (soon to be joined by the United States), of which 11 are Compliant.

The EITI aims to strengthen governance by improving transparency in the natural resource sector. Under the EITI, Compliant countries and companies operating within these Compliant countries are required to disclose all material payments or revenues paid (in the case of companies) and received (in the case of countries). The aim is that through this reporting, citizens and civil society are able to track that money and hold their governments to account for its management.

The EITI approach of promoting public reporting of revenue flows is being reinforced by legislation like Section 1504 of the US Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)¹, which requires companies to report on tax payments made in each country. The European Commission has recently proposed similar rules in the European Union.

These efforts are a welcome and necessary first step towards ensuring that all oil, gas and mining companies pay what they ought to and governments manage revenues as they should. For the first time in some countries, they have taken information of vital public importance and brought it out of the shadows of state secrecy, and into the public domain.

However, the risk of corruption lies not only in the flow of revenues from contracts and licences, but also right at the start, when extractive companies are granted access to these licences and contracts. Too often private 'shell' companies with opaque ownership structures are awarded lucrative concessions, with little information available as to who the beneficial owners of the company are, how much (if anything) the company has paid for the licence, and what the country has gained in return.

If these companies do not have the technical capacity or financial resources to develop the asset themselves, they may end up being carried by international and national operators. Alternatively, they may squat on lucrative concessions by acquiring them from government before 'flipping' them quickly to other investors who actually have the capacity to develop the licence.

It is our view that joint ventures with such shell companies, while not necessarily breaching anti-corruption laws such as the US Foreign Corrupt Practices Act (FCPA)², could be indirectly sustaining a system in which resource revenues are being siphoned off by corrupt elites. Whilst foreign investors may be fully compliant with the local and international laws, in effect, they are paying huge fees to elites in order to access the local market.

Angola and Nigeria are archetypal examples of countries which have been afflicted by the Resource Curse. They are two of the largest oil producing countries in Africa; exporting between them over four million barrels of oil per day.³ Their citizens, however, remain amongst the poorest in the world, with approximately 70 per cent of Angolans and 80 per cent of Nigerians living on less than two US dollars a day.⁴ This report reveals an alarming degree of opacity and scope for deviation from due process in what, in both countries, have been presented to the world as open and competitive oil allocation processes. As this report shows, the apparent overlap between political and business elite in the two countries has undermined public confidence in the licence bidding process and created suspicion over its legitimacy. The very existence of this suspicion, whether or not it is founded, is harmful. Political institutions and the sustainability of investments into industry are both endangered, which is counterproductive for development.

Our research reveals two major problems in the government allocation of oil contracts:

- Governments are not making clear the rationale for choosing particular companies in the bidding process and, in certain cases, they appear to allow companies special or preferential access to oil licences, leading to doubts about the integrity of the process.
- Governments are awarding oil licences to companies whose beneficial owners remain undisclosed. In certain cases, there are grounds for suspicion that some of the companies may be owned or controlled by government officials or their private-sector proxies.

This report also includes a short case study from the Democratic Republic of Congo (DRC), where the issues surrounding access to mineral licences remain very live and real. In this case, the state mining companies sold off stakes in four mineral concessions in secret to companies which were based in offshore tax havens and therefore did not have to disclose their ownership. There are also serious concerns that the sales prices agreed were much lower than most reported commercial estimates.

If citizens do not know why particular companies have been awarded natural resource licences, it leads to suspicions of wrongdoing, especially in countries like Nigeria, Angola and the DRC with track records of natural resource-related corruption.

The last part of this report recommends a number of measures that governments could adopt to make the allocation of oil and other natural resource licences more open and identify who benefits. These measures should be mainstreamed into the EITI and into national laws and regulations. It also presents a 'Citizens' Checklist' for the allocation of resource concessions. It is based on the investigative findings of the report and extensive discussion with civil society activists, academics, industry and international financial experts and others concerned with corruption.

INTRODUCTION TO THE CITIZENS' CHECKLIST

The Checklist is part of a broader global debate about the best ways for countries to manage their natural resource endowments to maximise the long-term benefits to their citizens while protecting other public goods, such as the natural



Citizens and civil society need to see the benefits from big oil and be able to hold their governments to account.

environment. An important product of this debate is the Natural Resource Charter, a set of principles for natural resource management by governments that was created by academics and civil society thinkers working with the British development economist Paul Collier. The Charter is designed to be used by reformist government officials, so our Checklist is a civil society complement to that approach, framing allocation issues from the perspective of what a citizen should be able to find out to be confident that the allocation of a resource concession was broadly free and broadly fair.

The Citizens' Checklist has three main principles:

- Citizens need full information about the ownership of companies that bid for oil, gas or mining rights, to ensure they are bona-fide companies with the competence to do the job, not simply fronts for corrupt vested interests.
- The process for awarding oil, gas and mining rights, and its outcome, need to be open to public scrutiny. Licences and contracts should be published.
- Independent mechanisms are needed to check that the rules are being upheld. These mechanisms should actively involve civil society groups from the country concerned.

African countries with mineral resources have too long been held back from prosperity by a baleful history of collusion between corrupt and incompetent rulers and amoral international companies: more transparency would ensure a more open competition and one that is fairer to countries and their citizens.

This is also true in other countries where competition between Western, Asian and other international extractive investors is growing. Iraq, with its huge oil and gas reserves, is an example of a country long plagued by conflict and misrule that will need to carefully manage the international competition for its resources, to avoid further corruption and instability. Another example is Afghanistan, with its large mineral reserves. In oil rich Libya, where former dictator Colonel Muammar Gaddafi was recently overthrown, Global Witness has just started a dialogue with local civil society and activists: their consistent message is that oil should now become the servant of the people of Libya, not its master.

International extractive companies, whether from the Americas, Europe, China or other parts of the world, would also benefit from a more open competition for access to natural resources in Africa and other developing regions. More transparency and public accountability would



Despite its oil wealth, many of Angola's citizens continue to live in poverty.

Panos



Corbis

Citizens are tired of corruption and want oil to be their servant not their master.

reduce the risk that well-intentioned companies lose out to corrupt rivals. It would ensure greater legitimacy for extractive companies, in the eyes of citizens, in countries where they may need to operate for decades to come, boosting investor confidence and reinforcing the rule of law in these countries' extractive sectors.

The home countries of international extractive companies also have an interest in a global competition for access to oil, gas and minerals that is more open and fair. Corruption and mismanagement of the natural resources sectors in poor countries can not only threaten the security of resource supplies, as in the Niger Delta region of Nigeria, where armed attacks on oil companies forced major cuts in production in the mid-to-late first decade of this century. Corruption also makes developing countries poorer and less stable, creating risks of conflict and humanitarian disaster which taxpayers in the world's richer countries will be expected to respond to.

For all these reasons, there is a pressing need for the principles of the Citizens' Checklist to be endorsed and put into effect by resource-rich countries, by multinationals and their home governments in the West, Asia and other regions. Corruption in the extractive industries has always

been an international problem and the solutions must also be international. International Financial Institutions, such as the World Bank and the European Bank for Reconstruction and Development, should make public disclosure of beneficial ownership a condition for providing financing to companies. International governments should ensure that anti-corruption and anti-bribery laws become a global norm and are adopted in all countries.

There is no single instrument that can enact all these reforms across a diversity of sovereign states. Solutions need to arise from national law such as stock listing regulations which require companies to disclose payments, from voluntary associations like the EITI, from good practice amongst corporations and, in the end, from the creation of international agreements which govern the access and trade of natural resources and ensure that public goods are adequately protected.

All these solutions need to start from a sincere recognition amongst decision-makers in both governments and industry, that for reasons of morality and enlightened self-interest, corruption should no longer be tolerated in the interest of securing cheaper oil and minerals for the rich world, at the expense of the poor.

ANGOLA & NIGERIA

WHAT IS AT STAKE?

Angola and Nigeria are the largest oil producers in Sub-Saharan Africa and both depend heavily on oil exports.⁵ While increased oil output has generated billions in rents for Angola and Nigeria, severe poverty persists in both countries.

Respectively, 63 per cent of government revenues in 2009 in Angola,⁶ and 40 per cent of government revenues in 2011 in Nigeria, come from oil.⁷ Despite tens of billions generated by oil revenues, approximately 70 per cent of Angolans and 80 per cent of Nigerians live on less than two US dollars a day.⁸ The life expectancy in Angola is 50 and 53 years for men and women respectively, and 52 and 53 years in Nigeria – both amongst the lowest in the world.⁹

In the past decade, there has been a frantic scramble to gain access to Angola's and Nigeria's available deposits of oil. Between 2004 and 2008, deep water technology enabled the opening of new oil fields off the coast, helping to intensify this global competition.

Angola and Nigeria need to invest their large oil revenues to create the conditions for higher living standards. The effective management of oil revenues is a crucial factor for these countries' development and the reduction of poverty.

A lack of transparency and due process in the allocation of oil licences is particularly a cause for concern because of both countries' history of corruption. It is widely accepted that the misappropriation of public funds and assets by corrupt elites has been a major cause of under-development.

In Angola, Global Witness has been documenting concerns about serious corruption relating to its oil sector since 1999. In our report *Crude Awakening* from 1999,¹⁰ we described how a significant portion of Angola's oil wealth was being subverted for personal gain and to support the aspirations of elite individuals at the centre of power around the Presidency.



Getty Images

Citizens should be able to ascertain who won the licence, how much they paid for it and what the country has gained in return.

Our 2004 report, *Time for Transparency*, noted that over US\$1 billion per year of the country's oil revenues – about a quarter of the state's yearly income – had gone unaccounted between 1997 and 2003.¹¹ In our report from February 2011, *Oil Revenues in Angola: Much More Information But Not Enough Transparency*, we noted that the significant gaps in the data published by the Angolan government about its earnings from the oil industry are undermining its attempts to shed its reputation for corruption.¹² We wrote to Angolan government officials to ask them to explain inconsistencies in official data but we did not receive a response.

In Nigeria, public figures commonly assert that hundreds of billions of dollars of public money have been lost to corruption since Nigeria became independent in 1960.¹³ One military ruler, the late Sani Abacha, is estimated to have looted several billion dollars between 1993 and 1998.¹⁴

A number of companies operating in Angola and Nigeria have been charged with violations of the US Foreign Corrupt Practices Act (FCPA) in the past few years.

- In 2007, Baker Hughes, an oil fields service contractor, agreed to pay more than US\$23 million in disgorgement and interest and US\$10 million in civil penalties in relation to charges of alleged bribery in violation of the FCPA in connection with its operations in Angola, and Nigeria, as well as a number of other countries.¹⁵ The FCPA complaint alleged that in Angola, from 1998 to 2003, Baker Hughes paid US\$10.3 million in commissions to an agent without adequately assuring itself that these commissions would not be passed on to employees of Sonangol to obtain or retain business in the country.¹⁶
- In US court documents, the global freight forwarding company, Panalpina World Transport (Holding) Ltd., admitted that through its subsidiaries and affiliates it engaged in a scheme to pay thousands of bribes to numerous foreign officials on behalf of many of their customers in the oil and gas industry in various countries including Angola and Nigeria.¹⁷ In 2010, the company agreed to pay a criminal penalty of US\$70.56 million to resolve investigations of FCPA violations.¹⁸
- In Nigeria, the US construction firm Kellogg Brown and Root agreed to pay a US\$402 million fine in 2009 for its part in a bribery scheme related to the construction of a natural gas plant, one of the largest fines ever in an FCPA prosecution.¹⁹ They, and their former parent company Halliburton Company, also jointly

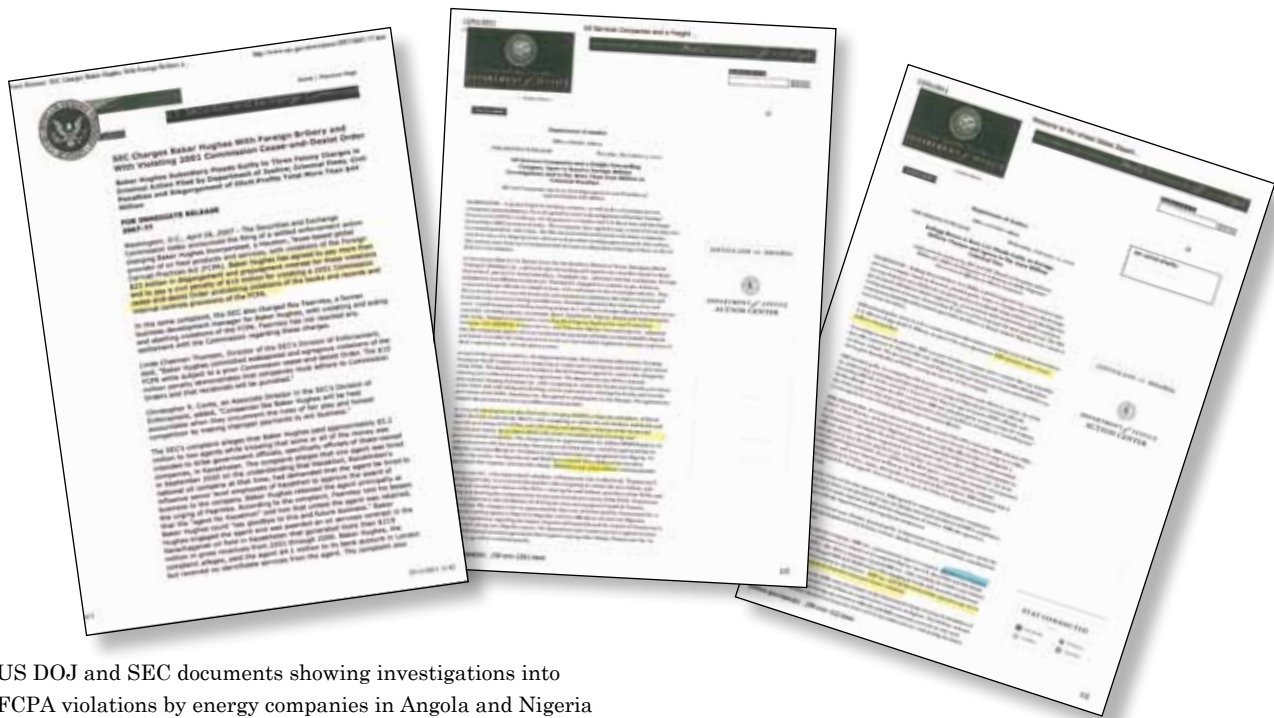
agreed to pay US\$177 million in relation to books, records and internal controls violations of FCPA anti-bribery provisions.¹⁹

- In 2007, the Dutch oil service company, Paradigm B.V., which provides enterprise software to oil and gas firms, agreed to pay a penalty in connection with improper payments made to government officials in Nigeria, as well as a number of other countries.²⁰ Paradigm admitted to agreeing to make corrupt payments in Nigeria of between US\$100,000 and US\$200,000 through an agent to Nigerian politicians to obtain a contract to perform services work for a subsidiary of the Nigerian National Petroleum Corporation.²¹
- A Nigerian subsidiary of Royal Dutch Shell Plc, agreed in November 2010 to pay US\$30 million to resolve charges relating to involvement in alleged FCPA books and records violations regarding payments to a subcontractor, some of which would be paid as bribes to Nigerian customs officials.²²
- In Nigeria, more than 10 energy companies have been charged with alleged violations of FCPA anti-bribery provisions.²³ Other energy companies named in FCPA investigations include: Snamprogetti Netherlands B.V.,²⁴ Technip S.A.,²⁵ ABB Vecto Gray Inc. and ABB Vetco Gray UK Ltd.,²⁶ Willbros Group Inc.,²⁷ Transocean Inc.,²⁸ and Tidewater Marine International.²⁹



Mortal Coil Media

Not all bribes look like this.



US DOJ and SEC documents showing investigations into FCPA violations by energy companies in Angola and Nigeria

There is an argument, for example made by Professor Theodore H. Moran from Georgetown University, that the FCPA should be amended in order to address what he describes as “gaping loopholes” in the current system. According to a 2008 paper by Moran, which discusses this international problem, companies have “devised sophisticated current payoff and reverse gift structures, with relatives and friends of host country officials.” Moran states that: “The family members and personal associates put up no capital of their own, had no resources at risk, and no obligations to either service the debt beyond surrendering a proportion of the dividend flow, or to provide any appreciable services to the international companies, except access to the concessions on favourable terms.”³⁰

One way to address such concerns would be for the Organisation for Economic Co-operation and Development (OECD) countries to develop anti-corruption laws further through the introduction of a test on whether or not a gift has been awarded, including an obligation to verify whether a local partner has provided any additional value or a genuine service for any payment that it has received.

WHAT OUR RESEARCH REVEALS

In recent years, the Angolan and Nigerian governments have sought to demonstrate greater transparency in the payments received from the oil sector. Angola has responded to criticisms of lack of transparency by publishing, from 2004 onwards, growing volumes of information about oil production, prices and financial flows to the government from oil companies, including the state oil company, Sonangol.³¹ Nigeria was one of the first countries

to implement the EITI, starting in 2003, and it became an EITI Compliant Country in 2011.

Despite these efforts in Angola and Nigeria, serious questions remain over the way that oil and gas licences are allocated to companies. Opacity in the allocation of licences may be undermining the prospect of progress towards transparency via the disclosure of oil revenues that are paid by companies to governments.

Both countries have the laudable aim in principle of increasing local participation in foreign-dominated oil sectors and have introduced legislation to that effect. In Angola, Article 26 of the 2004 Law on Petroleum Activities requires the government to “adopt measures to guarantee, promote and encourage investment in the petroleum sector by companies held by Angolan citizens.”³² The 2010 Nigerian Oil and Gas Industry Content Development Bill states that Nigerian independent operators shall be given first consideration in the award of oil blocks, oil field licences and oil lifting licences and in all projects for which a contract is to be awarded in the Nigerian oil and gas industry.³³ The precursor to this law was the 2006 Local Content Development Short Term Directives under which foreign companies were obliged to include a Nigerian content percentage in the bidding process in addition to ensuring the employment of local personnel. A similar directive also existed in 2005.

In both countries, some private indigenous companies have been allocated minority shares in oil licences or have been pre-qualified to bid for shares in such licences, even though these companies’ beneficial owners remain undisclosed to the public or have the same names as people who are public officials.

Foreign companies have then entered into partnerships with these companies, even when the owners are unknown. In one example in this report, a foreign company was unable to identify the owners of its local partner, despite several efforts. This demonstrates that it is not possible for foreign companies to have any confidence over whether or not the owners of the local partner could be government officials who have abused their position to obtain the oil licences. Some allocations even appear to have taken place outside any public bidding process.

While public officials in Angola and Nigeria are not barred from owning companies, they cannot use their official position to secure private financial benefits.

In Angola, Section 25a of Angola’s Public Probity Law of March 2010, forbids any public official from “receiving money, goods, real estate, or any other direct or indirect economic benefit as a commission, share, tip or gift directly or indirectly from an interested party, for oneself or for another person, which is obtained or supported by an act or omission deriving from the powers of the public official.”³⁴ The Act contains other similar provisions. Whilst all of the cases in this report predate this law, we understand that similar provisions were in existence at the relevant time.³⁵

In Nigeria, Article 19 of The Corrupt Practices and Other Related Offences Act 2000 provides that “any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer or any other public officer shall be guilty of an offence and shall on conviction be liable for five (5) years without option of fine.”³⁶ Other related provisions exist within the Act.

This report details events surrounding a number of specific processes of oil allocation between 2005 and 2010. The case studies described in this report do not amount to proof of illegality in relation to the individuals or companies named. We have written to the companies concerned but have only received responses in a few cases. The obscurity in the allocation of oil licences as well as Angola’s and Nigeria’s documented history of corruption, feeds public suspicion over the legitimacy of the licence bidding processes. Transparency is crucial for citizens’ ability to trust that conflict of interest laws have not been broken. As outlined in our Citizens’ Checklist, greater transparency and due process in the allocation of oil licences is necessary to quash these suspicions and ensure that Angola and Nigeria manage their oil revenues to foster development and reduce poverty.



Guenn Dubourthoumieu

Digging deeper into DRC’s mining sector has also unearthed opaque deals and companies in offshore tax havens.

CASE STUDIES: ANGOLA

Indigenous companies have played a growing role in the Angolan oil sector since the mid-2000s, when it became common for such companies to become the minority partners of bigger foreign companies in Angolan oil blocks. A 2004 Law on Petroleum Activities requires the government to “adopt measures to guarantee, promote and encourage investment in the petroleum sector by companies held by Angolan citizens.”³⁷ The aim of this law is to build local capacity in the oil sector, which is a legitimate aim in itself, given the historical domination of the Angolan economy by foreign companies and the Angolan state. The mere fact that domestic private companies receive preferential treatment under this kind of policy does not mean that such companies are necessarily engaged in any corrupt or unethical activity. But it matters very much that there be transparency about *which* local companies are favoured and *why*. Otherwise, this kind of policy can create suspicions that companies close to the political and economic elite are using their position to advance their private interest during the bidding process.

Our cases demonstrate that this policy has enabled certain indigenous oil companies to either pre-qualify to bid for or to obtain shares in Angolan oil blocks. These companies either do

not disclose publicly their beneficial owners, or when they do, some of the shareholders have the same names as senior public officials. This creates a suspicion that the beneficial owners of these companies are government officials, who could have benefited from an allocation process that favoured companies in which they had a financial stake. Without transparency over ownership and the allocation process, it is not possible for such suspicion to be dispelled.

In our first case study, Sociedade de Hidrocarbonetos de Angola (SHA), a company which had pre-qualified to bid for oil licences, had three shareholders with the same names as senior Angolan government officials. Global Witness wrote to each of these individuals to ask them to confirm whether they were shareholders in SHA at any time. We did not receive any response.

In our second case study, a company called Grupo Gema obtained a small stake in an oil licence at the time when it had two shareholders with the same names as Angolan government officials. Global Witness wrote to the individuals concerned to establish whether they were indeed government officials and shareholders of Grupo Gema at that time. We did not receive any response.

In our third case study, a Norwegian oil firm Norsk Hydro (now part of Statoil) entered into partnership with a private Angolan oil company, Somoil, which does not publically disclose its shareholders and declined to provide their names to Global Witness. Despite undertaking an extensive due diligence process, it was not possible for Norsk Hydro to ascertain the identity of their partners and thereby rule out potential risks of corrupt practices.

1. PRIVATE COMPANIES, GOVERNMENT NAMES?

a. Sociedade Hidrocarbonetos de Angola

Sociedade de Hidrocarbonetos de Angola (SHA) was an indigenous private company pre-qualified by Sonangol to bid as a non-operator in the 2007/2008 licencing round. Three of its shareholders have the same names as public

SONANGOL: PRODUCER AND REGULATOR

Sonangol is the centre of power in the Angolan oil industry and dominates the Angolan economy. Sonangol produces oil in its own right, collects revenues and sells oil on behalf of the state, acts as a regulator of other companies, and controls the allocation of exploration and production licences. The company also invests widely in other sectors of the economy, borrows large sums from international banks, still uses its oil revenues to fund “quasi-fiscal activities” on behalf of the government, such as oil subsidies for the population, although at the time of publishing some of these practices appear to be under review.¹⁴⁰

Foreign donors have long been calling on Angola to address the conflict of interest arising from Sonangol playing the dual role of commercial oil producer and regulator of the oil sector, without any visible effect. Norwegian advisers recommended as long ago as November 1990 that Sonangol should not both administer and regulate the oil sector.⁴³ The IMF has said since 2004 that “ensuring that Sonangol waive its rights to approve contracts when its subsidiaries participate in the bidding” should be a “priority action” for Angola, but noted that as of October 2007, this action was “not initiated.”⁴⁴ Nor is there any sign that it has been since then.

Sonangol is closely controlled by the leadership of Angola. The president of the company’s Administration Council (usually referred to in the media as its chairman and chief executive) is Manuel Vicente, an ally of President dos Santos who also sits on the politburo of the ruling MPLA party.⁴⁵

officials.³⁸ This bidding round was ultimately postponed and never in fact took place. However, SHA’s pre-qualification to bid and the information discussed below raises questions about whether there was an attempt to use the regulatory power of Sonangol to advance the private interests of public officials (including Sonangol’s own chairman). Again, the opacity surrounding licence allocation prevents public scrutiny of this issue. Why SHA was selected to pre-qualify is unclear as there has been little information in the public domain about the company other than media reports that it has been awarded an exploration licence for an offshore oil block in Guinea-Bissau.³⁹

SHA’s corporate registration documents, seen by Global Witness, listed a person named Manuel Domingos Vicente as being a 26 per cent shareholder in the company, the same name as that of the Chairman of Sonangol. Global Witness wrote to the latter to ask if he had owned shares in SHA at any time but has not yet received a response.

A person called Manuel Hélder Viera Dias Júnior was also listed as a 26 per cent shareholder in the company. A General Manuel Hélder Viera Dias Júnior, known as Kopelipa, has been President dos Santos’ top military adviser for many years and serves as Head of the Military House.⁴⁰ More recently, he has headed up Angola’s National Reconstruction Office (*Gabinete de Reconstrução*

Nacional), which was set up in 2005 to manage large investment projects and was “exclusively accountable to the Angolan presidency.”⁴¹ Global Witness wrote to General Kopelipa and asked him if he was a 26 per cent shareholder in SHA but has not yet received a response.

SHA’s records identify another 26 per cent shareholder as being a person named Leopoldino Fragoso do Nascimento. This is also the name of a general who is head of telecommunications for Angola’s Presidency.⁴² Global Witness wrote to the latter to ask if he had owned shares in SHA at any time but has not yet received a response.

The fact that SHA pre-qualified in the 2007/2008 bidding rounds even though three of its largest shareholders happen to have the same names as senior Angolan public officials is enough to create suspicion amongst Angolan citizens as to the transparency of the process through which public officials can access Angolan oil. This information about SHA demonstrates a serious concern about Sonangol’s selection of such companies to take part in bidding rounds and illustrates the need for much greater transparency about who ultimately benefits from these companies and how and why they are selected to bid.

b. Grupo Gema and block 18/06

Grupo Gema was described in January 2006 by the US-Angola Chamber of Commerce as an

Angolan holding company involved in various activities including oil and mining.⁴⁶ It owns a five per cent share in a deepwater exploration Block 18/06 in Angola.⁴⁷ A map of Angolan oil concessions on Sonangol's website, dated November 2011, names the company that holds this share as Geminas.⁴⁸ The company is identified in a media report as a subsidiary of Grupo Gema.⁴⁹

Grupo Gema's corporate records from 2005⁵⁰ reveal that shareholder Joaquim Antonio Carlos dos Reis Júnior has the same name as an official who served as Secretary to Angola's Council of Ministers in 2004 and is now an MPLA member of parliament.⁵¹ The Council of Ministers approves investments over US\$5 million as well as any investment that requires a concession (such as oil or mining).⁵³ Angolan anti-corruption activist Rafael Marques de Morais raised concerns in a report in December 2009 about whether Joaquim Antonio Carlos dos Reis Júnior had a conflict of interest with regards to Grupo Gema.⁵² Global Witness wrote to dos Reis Júnior and asked for his comment on the above but did not receive a response.

Paulo Gaspar de Almeida was also listed as a shareholder of Grupo Gema⁵⁰ and has the same name as a man who was identified in media reports as a police officer who held a senior rank as of early 2005. As of September 2011, he was Chief Commissioner of the National Police.⁵⁴ We also wrote to Gaspar de Almeida at Angola's national police headquarters, but did not receive a response.

If dos Reis Júnior and de Almeida were at the same time public officials and shareholders in a private oil and mining company, it is reasonable to question whether or not they were in a position of conflict of interest at any time.

In the case of Group Gema, the most prominent name associated with the company is its Chairman, Jose Leitão da Costa. Leitão da Costa was formerly "one of the most influential figures in the Angolan government," according to the government-controlled *Jornal de Angola* in July 2008: he had previously served as Cabinet Secretary and held various other positions in the office of President dos Santos.⁵⁵



The all-powerful Sonangol is both the producer and regulator of the oil sector in Angola.

Jose Costa

COBALT INTERNATIONAL ENERGY

Another foreign company involved in local partnerships in Angola is the US-listed oil exploration firm Cobalt International Energy, whose major investors include the Wall Street bank Goldman Sachs.⁵⁸

Cobalt executed an agreement with Sonangol in February 2010 which would give it access to two offshore oil exploration licences in Angola.⁵⁹ The Angolan government assigned two opaque companies as local partners in this project, Alper Oil (Alper) and Nazaki Oil & Gas (Nazaki), which Cobalt took on. This is despite the fact that Cobalt's US regulatory filings stated that: "We have not worked with either of these companies in the past, and, therefore, our familiarity with the companies was limited. Violations of the FCPA may result in severe criminal or civil sanctions, and we may be subject to other liabilities, which could negatively affect our business, operating results and financial conditions."⁶⁰

Global Witness sent Cobalt a list of questions in May 2010, including the crucial question of who owns Alper and Nazaki. Cobalt declined to give specific answers on the grounds that this would involve "selective disclosure of non-public information" and, in some cases, would breach confidentiality provisions. However, they referred us to public filings and stated that they take compliance with FCPA and other laws extremely seriously.⁶¹

Regarding Nazaki, Angolan anti-corruption activist Rafael Marques de Morais published a report in August 2010 which alleged that the company was ultimately owned by three senior Angolan government officials: Manuel Vicente, General Kopelipa and Leopoldino Fragoso do Nascimento.⁶² Global Witness is not in a position to confirm these allegations however, if proved to be true, they would raise serious questions about a conflict of interest. Having written to each of these officials to ask about these allegations, Global Witness has not received any response. Then in March 2011, Cobalt reported that it was the subject of inquiries by the US government into "allegations of a connection between senior Angolan government officials and Nazaki." Cobalt stated that it believes its activities have complied with all laws, including the FCPA and that it was cooperating with the enquiries. It added that "Nazaki has denied verbally and in writing the allegations of a connection between senior Angolan government officials and Nazaki."⁶³

But the questions remain: why did Sonangol promote two obscure companies into a partnership with Cobalt, which then stood to make substantial profits if Cobalt found oil? And why did Cobalt accept the partnership, despite identifying concerns about the possibility of corruption?

Leitão da Costa featured in a March 2004 report by Global Witness, *Time for Transparency*: during the 1990s, Angola sought to repay its sovereign debt to Russia via a complicated scheme that channelled Angolan oil revenues through an offshore company called Abalone Investments Limited. A document containing a list of transactions through Abalone's Swiss bank account, reproduced by Global Witness in its 2004 report, shows that US\$773.9 million flowed through the account between 1996 and 2000 but only US\$161.9 million appears to have been paid to the Russian finance ministry. The rest of the money went to a long list of companies, often of obscure ownership, and several individuals. One name on the list is that of "Jose Leitão Da Costa & Silva," who is

recorded as having received US\$3 million via a bank in Geneva. As far as Global Witness is aware, the purpose of this large payment to an Angolan government official, out of funds allocated to repay the country's debt, has never been explained.⁵⁶

Although regarded as hugely influential, Leitão was not serving as a government official at the time when Grupo Gema acquired its share in Block 18/06. There would not be a conflict of interest in respect of Angolan law as Leitão stood down from public office years earlier.⁵⁷ Nevertheless, his chairmanship of Grupo Gema demonstrates a worrying overlap between the political elite in Angola and private oil companies.

The fact that two of the shareholders had the same names as public officials and that the Chairman of Grupo Gema is politically influential creates suspicion over the legitimacy of the bidding process. Greater transparency over why certain companies are chosen over others could help dispel these suspicions and increase the confidence of the Angolan citizens over the authenticity of bidding process.

2. SOMOIL: WHO ARE YOUR OWNERS?

Sociedade Petrolífera Angolana S.A.R.L (Somoil) has shares in some of Angola's most productive oil blocks, and stands out from the other private indigenous oil companies mentioned in this chapter because it also operates oil fields in its own right, as well as holding shares in oil licences. According to a concession map on Sonangol's website, Somoil operates two blocks and has equity shares in five oil blocks in Angola.⁶⁴

Despite its participation in a number of oil blocks in Angola, Somoil's owners have never been publicly disclosed. As this section will show, one of its foreign oil company partners, Norway's Norsk Hydro (whose Angolan oil assets were taken over in 2007 by Statoil), went into partnership with Somoil. Despite several attempts, it was not possible for Norsk Hydro to identify Somoil's owners. As a result, Norsk Hydro attempted to put in place provisions which would mitigate a potential risk that Somoil's shareholders could include Angolan government officials or other conflicted individuals.

a. An anonymous company

Because of the lack of information surrounding Somoil ownership, Global Witness wrote to Somoil's chairman in August 2010 and asked him to identify Somoil's shareholders. He replied: "Somoil is a private company incorporated in Angola and details of its incorporation, including its shareholders, are of public knowledge and were gazetted in the "Diário da Republica" (Government Gazette) at the time of its incorporation."⁶⁵

According to records from Angola's Diário da Republica, dated 22nd September 2000, Somoil is a *Sociedade Anónima de Responsabilidade Limitada* (S.A.R.L.), or anonymous limited-liability company.⁶⁶ The records provide its articles of association, but do not identify its shareholders.⁶⁷

Global Witness wrote back to Somoil's chairman in September 2010 and asked him to provide

a copy of any public record that identifies Somoil's shareholders. Global Witness did not receive a reply.

It has been suggested in the press that Somoil is controlled by people close to senior Angolan government officials. *Africa Energy Intelligence* newsletter reported in October 2008: "Somoil is simply controlled by interests very close to the Angolan government and particularly to [...] the CEO of Sonangol, Manuel Vicente."⁶⁸ Global Witness asked Somoil to comment on this report and its chairman replied: "As you might appreciate, Somoil cannot comment on statements made by others and suggests that any clarifications you may require may be obtained directly from these entities."⁶⁹

b. Statoil, meet Somoil

Obscurity around the beneficial ownership of indigenous companies poses serious risks to foreign oil companies in partnership with indigenous companies.

On July 2005, the Norwegian state-controlled company Norsk Hydro was awarded a 20 per cent stake in Block 4/05 in Angola with a unit of Sonangol taking a 50 per cent stake.⁷⁰ Sonangol informed the Norwegian company that the remaining 30 per cent of the shares in the block would be divided between Somoil and another private company.

Somoil's undisclosed ownership raised serious concerns with its Norwegian partner Norsk Hydro in Block 4/05 as they were uncomfortable with not knowing the company's shareholders. An internal report showed that Norsk Hydro formed an internal task force to evaluate the matter and pursued a variety of mitigating steps which included, "hiring a well-known investigative firm to conduct a due diligence investigation on the Angolan company and seeking advice from Angolan, Norwegian, and from United States Counsel." The report did not identify Somoil as the company in question, but Global Witness considers that Somoil is referred to because the other private Angolan company (ACR) in the block does disclose its shareholders.⁷¹ The report adds that Hydro was not able to determine the identities of the owners.⁷²

In October 2005, Norsk Hydro signed the Production Sharing Agreement, following which the company attempted to include protective provisions into the Joint Operating Agreement with its Angolan partner. Specifically, Norsk Hydro attempted to incorporate in the Joint

Operating Agreement, "a warranty that the parties would not make corrupt payments and a requirement that any public officials with an ownership interest in one of the partners would not participate in governmental decisions affecting the venture (as already required by Angolan law)."⁷³ The company also put in place a detailed plan for monitoring the partnership and its procurement activities.⁷⁴

It is not clear, however, whether or not these anti-corruption safeguards were entered into the agreement and put into practice. Global Witness wrote to Statoil, which had, due to a merger, taken over Norsk Hydro's shareholding in Block 4/05, and asked Statoil Hydro to confirm that these safeguards had been included in its agreements with the other partners on the block. Statoil said it could not reply because it would involve disclosing "legal information which is submitted to the relevant authorities."⁷⁵

The Somoil case exemplifies the difficulties that companies, international or otherwise, can face trying to ensure the propriety and openness of their business dealings whilst operating in an

opaque environment. If Somoil is in fact owned by public officials who have used their influence to obtain the asset, it is arguable that the effect of Norsk Hydro and its successor operating with the company is that they would be indirectly sustaining a system in which oil revenues are being siphoned off by the elite.

The fact that Statoil Hydro were unable to identify who the owners of its partner were, further exemplifies the high level of secrecy surrounding the true ownership of many private Angolan oil companies operating in the sector. If an international oil company is unable to identify its partners, despite an extensive, and no doubt expensive, due diligence process, it appears that it would be impossible for Angolan civil society and the Angolan citizens to monitor who profits from its oil. This continued level of secrecy starkly contradicts and undermines the recent efforts made by Sonangol to increase transparency in the oil sector and underlines the fact that while progress has been made in some areas, overall transparency in Angola has hardly progressed at all.



A high level of secrecy still surrounds the oil sector and it remains remote from Angolan citizens.

RICH SONANGOL, POOR ANGOLA?

The lack of transparency surrounding the allocation of oil licences in Angola is not restricted to indigenous oil companies, but is a recurring problem throughout the oil sector in Angola.

In the summer of 2009, the Government of Angola turned to the International Monetary Fund (IMF) because a sharp fall in world oil prices was threatening the country's balance of payments. Angola has long avoided borrowing from the IMF because the Fund insists on policy conditions in return for its loans including requirements for more transparency in the oil sector. In November 2009, the two sides agreed that the IMF would lend Angola US\$1.4 billion during a three-year period, subject to the government undertaking certain reforms. These included greater transparency in the flow of oil revenues between Sonangol and the state and the publication of Sonangol's audited accounts (the latter happened in April 2010).⁷⁶

It is clear that Angola badly needed the money. The IMF said in its public report on the loan agreement that: "[IMF] staff and the authorities agreed that, absent a comprehensive adjustment program, there is an imminent risk of a balance of payments crisis [in Angola]."⁷⁷ It later emerged that Angola's cash-flow problems were more serious than even the IMF had realised; the government admitted in July 2010 that it owed US\$9 billion in arrears to foreign construction firms in the country. This was around three times larger than earlier estimates of the debt and the admission wrecked the Angolan government's plans to improve its finances by borrowing from the international bond market in mid-2010.⁷⁸

However, while the Government of Angola was searching for foreign loans, Sonangol was continuing to expand its interests. Shortly after the IMF loan of US\$1.4 billion was agreed, Sonangol bought 20 per cent of Marathon's stake in Block 32, an offshore block, in Angola for US\$1.3 billion. Marathon had originally intended to sell this stake to two Chinese state-owned companies, China National Offshore Oil Corporation and Sinopec, but Sonangol stepped in and exercised its right of first refusal, which it is legally allowed to do.⁷⁹

Sonangol paid Marathon US\$1.3 billion for this stake in Block 32 in the first quarter of 2010, according to Marathon's US regulatory filings.⁸⁰ In other words, it appeared that within weeks of the IMF agreeing to lend US\$1.4 billion to Angola to prop up the government's damaged finances, Sonangol paid a sum that was almost as large, to expand its own oil assets.

However, although it was Sonangol which bought the stake from Marathon, Sonangol's chairman Manuel Vicente told the company's own magazine that: "We will add this share in Block 32 to a joint venture we have with the Chinese called China Sonangol."⁸¹

China Sonangol is a joint venture set up in Hong Kong in 2004 between Sonangol (which owns 30 per cent of its shares) and private investors based in Hong Kong (who own the remaining 70 per cent).⁸² Since its incorporation, China Sonangol and its subsidiaries have pledged to invest billions of dollars across Sub-Saharan Africa, Latin America and South East Asia, largely as part of resource for infrastructure deals in Guinea, Angola and Zimbabwe.⁸³ Until September 2011, Manuel Vicente served as the Chairman of China Sonangol and played an active role in its international expansion – for example he signed (by power of attorney) the company's contract

**CHINA SONANGOL CURRENTLY HAS
STAKES IN NINE OUT OF THIRTY-FOUR
OIL BLOCKS IN ANGOLA, HOWEVER
THERE IS LITTLE INFORMATION
AS TO THE TERMS UNDER WHICH
CHINA SONANGOL HAS OBTAINED
THESE OIL LICENCES.**

in Guinea⁸⁴ and is reported in the press to have welcomed the investment in Zimbabwe.⁸⁵ Global Witness has mapped China Sonangol's deals across the world, and has serious concerns over the lack of transparency surrounding its operations. These issues have been the subject of two investigative press reports, one published by The Economist in August 2011, and the other published in Caixin in October 2011.⁸⁶

In Angola, the nature of the financial relationship between Sonangol and China Sonangol remains unclear. China Sonangol currently has stakes in nine out of 34 oil blocks in Angola;⁸⁷ however, there is little information as to the terms under which it has obtained these oil licences. Sonangol has many such relationships with other companies, which are rarely explained in any detail in public reports and do not appear to be consolidated into its accounts.⁸⁸ In the case of Block 32, Vicente, in his Sonangol magazine response, did not say how or if Sonangol was paid for this asset by China Sonangol and we are not aware of any further information in the public domain. This transaction does not appear to feature in Sonangol's 2010 annual report.¹⁰⁴ As it stands, Sonangol appears to have spent US\$1.3 billion on the 20 per cent stake in Block 32, only to add it to a joint venture in which Sonangol is a minority partner.

So, months after the Angolan government appealed to the IMF for financial assistance, Sonangol entered into a complex transaction which did not have an obvious financial benefit. We are not suggesting any illegality on the part of Sonangol in this exchange; however, it is in the public interest for the citizens of Angola to be in a position to understand the business decisions that are being taken by the national oil company.



Sonangol reported a US\$2 billion profit in 2009. This wealth has not trickled down.

CONCLUSION

This section has shown a number of cases where Sonangol appears to have used its power as a regulator and an investor to award potentially lucrative stakes in Angolan oil fields to private oil companies of unknown or questionable ownership. If oil is found by large and established firms that actually operate these fields, then these small companies stand to make huge profits.

The ostensible purpose of passing legislation to promote the inclusion of Angolan oil companies in oil licences is to build local capacity. But in a situation where some of these companies have shareholders with the same names as government officials – including Sonangol’s own chairman – or where the names of the ultimate owners of the companies are unknown, there is a suspicion unless otherwise explained that the legislation may, in practice, advance the private interests of the political and economic elite. Whilst the case studies in this report do not amount to proof of illegality on the part of the individuals or companies named, they highlight important concerns regarding the oil allocation process.

Given Angola’s history of gross corruption, it is reasonable to be concerned that Sonangol’s power could be exploited to serve the private financial interests of government officials or their proxies. The only way for Sonangol and the Angolan leadership to disprove this scenario is for all

companies that hold oil and gas rights in Angola, or plan to bid for such rights, to fully disclose their ultimate beneficial ownership and their sources of funds. Sonangol and the Angolan government should, after each bidding round, publish the reasons why a particular company has successfully obtained an oil licence. Unless and until this happens, pledges of greater transparency in the oil sector will have little meaning.

The systematic nature of corruption in Angola is well-known and has been documented for many years by parties inside and outside the country, including Global Witness; so too has the deep suffering of Angola’s people. We believe that foreign companies should not go into partnerships with local companies in Angola in any case where there is reason to suspect that the local company’s beneficiaries may include government officials who are taking advantage of their public positions to enrich themselves privately. They should insist, and call on their home governments across the world to insist, that Angola increases transparency in the allocation of oil licences and ensures that bidding takes place in an open, competitive and transparent way.

Angola has a chance to use its oil wealth to build a sustainable future, and this chance could well be squandered by corruption. The urgency of preventing yet another state failure in Africa, and avoiding yet more suffering for the Angolan people, should override the lure of quick profits and easy energy supplies.



Because oil is a non-renewable resource, Angola has one chance to use its oil wealth to build its future.

RECOMMENDATIONS:

Angolan policy makers should take these specific steps to improve transparency:

1. Ensure full transparency over the ultimate beneficial ownership of Sonangol’s subsidiaries and joint venture partners

- Sonangol should publicly disclose, in full, the ultimate beneficial owners of all of its subsidiaries and joint venture partners.
- Any government official found to be the ultimate beneficial owner of a company participating in the bidding for oil licences must provide evidence that he or she is not using his or her position to obtain the oil licences.
- If these disclosures reveal any violations of Angolan law by government officials, for example, using their position to enrich themselves or their relatives, then these cases should be proactively investigated.
- Where it can be established that oil licences have not been obtained in a lawful manner or where there is a conflict of interest in the process of awarding a licence, they should be revoked.

2. Publication of oil licences, contracts and subcontracts, and continuous monitoring

- The rules for pre-qualification and bidding for oil licences should be published. Independent monitors should be present at all stages of the licencing process, from the pre-qualification of companies, through the bidding process itself to the award of contracts.
- These independent monitors could be drawn from non-governmental organisations, independent experts, professional associations, trade unions and other bodies outside the government.
- If necessary, they should be empowered to present their findings to parliament and the public and call on the government to commence investigations.
- All licences, contracts and subcontracts should also be published, so as to make it easier for civil society groups and observers to determine that the terms of a licence or contract are not unduly favourable to the company and that the company is meeting these terms, especially if the company is owned or controlled by a government official.

3. Removing conflicts of interest on Sonangol’s part

- The IMF and World Bank have long recommended that Sonangol should not make decisions about the allocation of oil licences where Sonangol’s own subsidiaries are taking part in the bidding.
- For genuine public accountability, control of oil licencing should be removed from Sonangol’s hands altogether and should be vested in an independent agency with a strong independent mandate, operating in a transparent fashion.

Companies working in Angola should do the following to improve transparency:

1. Ending the risk of foreign companies sustaining corruption in Angola

- Foreign oil companies should not go into partnership with any local companies whose ultimate beneficial ownership has not been made public, let alone any companies whose owners may include government officials.

CASE STUDIES: NIGERIA

Nigeria's oil industry presents a very different face to the world than Angola's. Where Angola's state oil company Sonangol is widely regarded as an efficient operation, tightly controlled from the top, its Nigerian equivalent, the Nigerian National Petroleum Corporation (NNPC) was described by a government committee in 2008 as "simply a typical Nigerian State institution that operates as a huge amorphous cost centre with little or no sensitivity to the bottom line."⁸⁹

But despite the many differences between Nigeria and Angola, the two countries' oil sectors exhibit the same problem of opacity and lack of due process in the allocation of oil and gas exploitation rights. As in Angola, particular concerns arise from a policy of "local content," designed with the laudable aim of bringing more indigenous companies into the oil industry but vulnerable in practice to exploitation by public officials and their proxies in the private sector.



In 2004, President Obasanjo's government pledged to reform the opaque system for the allocation of oil licences.

The general concern about the risk of abuse of such policies is illustrated by comments in 2007 by Ngozi Okonjo-Iweala, a reforming minister of finance in Nigeria from 2003 to 2006 who has returned to this position in July 2011:

"Politicians in Africa have observed that in the UK and USA, big business and wealthy individuals help to finance elections and sometimes develop a symbiotic relationship with those in power. In the absence of big indigenous businessmen and women, the attempt is to create them by granting special favours, licences, and concessions in a manner that enables these business people to make huge sums of money – a good deal of which is then kicked back into political finance. This is the new frontier in corruption and the financing of democracy."⁹⁰

As Nigeria depends heavily on the oil and gas sector, any attempts to limit corruption in the country's political system will require much more government accountability to Nigeria's people for the management and allocation of oil assets and revenues. This section will highlight a key problem that needs urgent reform – the way that an ostensibly transparent system for awarding oil and gas licences to companies appears to have delivered lucrative shares in these licences, in a highly opaque manner, to companies with apparent close links to senior public officials and politicians.

One case discussed in this report raises questions about whether a Nigerian company which bid for a share in oil contracts was owned by a Senator chairing a Senate committee responsible for overseeing the upstream oil sector.

The second case study discusses the allocation of an oil licence to a company called Starcrest Energy, where the company appears to have acted as a middleman by selling a part of a licence for a large private profit. Global Witness wrote to Starcrest and put our concerns to the company. Their response is included in this report.

In the context of Nigeria's history of corruption, this report raises serious questions about the



Nigeria depends heavily on oil, but who is behind the companies operating there?

role of indigenous companies and the possibility that the laws promoting local companies could be exploited for unjustified private gain. Despite bidding rules and policies that were intended to promote transparency – in the spirit of the EITI – Nigeria's political system continued to allow oil deals to be negotiated in an opaque manner.

The flaws in the contract allocation processes which cause these questions to arise need to be addressed through effective transparency over the process, such as through the mechanisms described in our Citizens' Checklist.

1. CONTROVERSY AROUND CONTRACTS TO 'LOCAL PARTNERS'

After endorsing the EITI in 2004, the government of then-President Olusegun Obasanjo pledged to reform the highly opaque system for allocating oil licences to companies to make it more transparent, in line with the EITI Principles.

The first test of this commitment was a large bidding round in August 2005 for dozens of Oil Prospecting Licences (OPL). This bidding round turned out to be highly problematic in practice:

a Nigerian parliamentary committee later concluded, in a 2008 report, that:

"The overall objectives of the Bid Round though highly commendable were not achieved. Many factors were responsible for this failure...Central to all these factors were two things. First, the obvious manipulation of the bid process for various reasons to meet specific ends and secondly, the room such manipulation created for abuse. The result is that due process and transparency which were touted as the hallmark of this bid round were definitely blurred."⁹¹

One problematic aspect of the bid round stemmed from local content policies. The government intended that Nigerian companies known as 'local content vehicles' (LCVs) would take shareholdings of up to 10 per cent in all the bidding consortia. Larger foreign companies, and a small number of Nigerian firms that were big enough to bid in their own right, were expected to partner with these 'LCVs'.

The aim of the LCV policy was to give opportunities to local investors in the oil sector otherwise dominated by foreign companies. By working alongside more experienced and larger oil companies, the theory was that these LCVs

would gradually acquire technical knowledge of the oil industry.

However the policy was very difficult to apply in practice, partly because the government was swamped by the sheer number of companies applying to be LCVs, many of which according to a Nigerian EITI report, “lacked any real technical expertise and consequently were unable to make decisions that were from any realistic financial standpoint.”⁹²

A lack of transparency around the bidding process has contributed to suspicions that these processes, rather than helping to create technology and knowledge transfer and build the capacity of the indigenous Nigerian oil industry, could have been used as a way of distributing political patronage. In 2005, Nigeria’s This Day reported:

“No other segment of activity in the oil sector was subjected to abuse like allocation of licences. The abuse coined a lexicon in upstream business known as the discretionary allocation, which in the Nigerian parlance meant, issuance of oil licences to favoured

individuals or companies with links to the ruling clique.”

Such suspicions are difficult to dispel in the absence of highly transparent licencing processes which make clear to the public why a particular company has been chosen over another.⁹³

It appears that a private company in the 2005 bidding round may have been indirectly partly owned by a Nigerian Senator, who chaired a parliamentary committee with direct oversight authority over the upstream oil sector. This possibility in itself creates significant questions about the integrity of these licencing rounds and the potential for a conflict of interest between the Senator’s official duties and his private interests.

a. 2005: Did a Nigerian Senator have a conflict of interest in the allocation of an oil licence?

In 2005, Conoil Producing Limited (Conoil), an established Nigerian oil firm, won an offshore oil block named OPL 257.⁹⁴ Conoil’s LCV partner on this bid was a company called New Tigerhead PSTI Limited.⁹⁵

New Tigerhead PSTI Limited is owned by two companies: PSTI Limited and New Tigerhead Nigeria Limited.⁹⁶ As at July 2009, corporate records show that New Tigerhead Nigeria Limited was controlled by a person called Lee Maeba, who owned 80 per cent of its shares, with the remaining shares owned by other people with the surname Maeba at the same address.⁹⁷ Incorporation documents show that New Tigerhead Nigeria Limited was incorporated in 1999 by a person called Lee Maiba [sic], of the same address as the Lee Maeba in the 2009 records holding 80 per cent of shares. It therefore appears that at the time of the bidding round in 2005, the same person was in control of the company.⁹⁸

Lee Maeba is also the name of a long-serving Nigerian Senator. We understand that Senator Lee Maeba chaired the Senate Committee on Petroleum at the time of the 2005 bidding round and took part in the international road show to launch the round to investors.^{99, 100}

The Senator reportedly told a public meeting in his home region in the Niger Delta in December 2009: “I am also proud to state that I established a private construction company called New Tigerhead Nigeria Limited.”¹⁰¹ Moreover, Lee Maeba has been open about his association with the company on his website where he states that: “While pursuing his higher education career Lee nurtured and developed several successful companies including [...] New Tigerhead Nigeria Limited over which he presided as Chairman and Chief Executive.”¹⁰²

The Senator was Chair of the Senate Committee on Petroleum Resources Upstream, the jurisdiction of which included oil block allocation.¹⁰³ As Chairman of this committee, it is possible that the Senator could have been in a position that afforded him competitive advantage. Therefore, his apparent indirect beneficial interest in a private company which won a share in an oil licence during the bidding round creates a suspicion of a conflict of interest.

We made several efforts to contact Lee Maeba for comment via letter, phone and email, but did not receive any reply. A letter to Conoil also did not receive a response from the company.

Due to a lack of transparency, it is impossible for an observer to determine the actions that were taken by either Lee Maeba or the government of Nigeria to ensure that due process was followed in the allocation of this licence. The lack of available information raises questions about the integrity

of bidding rounds in which a valuable share in an oil licence could be won by an LCV partly-owned by a senior political figure active in the oil sector.

2. 2006-2009: THE STARCREST SAGA

The bidding round which took place in Nigeria in May 2006, known as the “mini-round”, raises more questions about the role of indigenous companies and the transparency of bidding processes. This bid round was much smaller than its predecessor and the bidders were mostly companies from China, India and other foreign countries which had pledged investments in Nigeria’s infrastructure in return for being granted oil licences. One case that later attracted controversy in the media was the case of Starcrest Energy Limited.

a. Starcrest

Starcrest Energy Limited is an international offshore company registered in the Republic of Seychelles and controlled by Emeka Offor, a Nigerian businessman who was described by the Office of the Attorney General of Sao Tome and Principe, a country which neighbours Nigeria, as a “known confidante and campaign supporter of President Obasanjo”¹⁰⁵ and by Chatham House as “a key financier of the ruling party [in Nigeria].”¹⁰⁶

In 2006, it appears that a local subsidiary of Starcrest Energy Limited, Starcrest Nigeria Energy acquired oil block OPL 291 by swapping it with another block (OPL 294) that it had won during an earlier bidding process. Soon after, it entered into a Production Sharing Agreement in relation to OPL 291 and was paid US\$35 million by a foreign investor while retaining a large minority stake in the licence.

Questions over Starcrest’s acquisition of OPL 291 were first raised in October 2006 by the *Financial Times*, which noted that “Starcrest [is] a company ... which industry sources say has strong political connections.”¹⁰⁷ The situation led to three government investigations, two of which ultimately absolved Starcrest of any wrongdoing and one of which was discontinued.

However, the facts presented below suggest a need for clarity as to how an obscure company, reported to have strong political connections, was able to win an oil licence after the initial bidding process and realise a substantial profit on it within a matter of months.



Public records documents from 2009 show that New Tigerhead Nigeria Limited was controlled by a person called Lee Maeba, the same name as a long-serving Nigerian senator.

b. How Starcrest won OPL 291 and promptly sold most of it

One of the oil blocks on offer in the mini-round of May 2006 was OPL 291.¹⁰⁸ According to a letter to the Nigerian EITI from the Ministry of Petroleum Resources (hereafter the MPR Letter), Starcrest took part in the auction on 19th May 2006 and bid for and won oil blocks 226 and 294 after paying the requisite fees and taking part in the public bidding process.

An Indian consortium had a right of first refusal¹⁰⁹ on OPL 291, but did not exercise it and their right of refusal duly lapsed.¹¹⁰ At a reconvened session at the MPR, Starcrest and another company, Transnational Corporation (Transcorp) appealed to be allowed to swap the blocks that they had won for OPL 291.¹¹¹ Transcorp was given the initial opportunity by MPR officials to swap an oil block for OPL 291. The MPR’s letter says that there were “numerous meetings” with Transcorp’s representatives between May and August 2006 “to meet the terms of the award of the OPL 291, including the identification of a suitable deep-water operator and payment of Signature Bonus.”¹¹²

Ultimately, Transcorp failed to pay the signature bonus and did not acquire the licence.¹¹³

After the bidding rounds, Transcorp became a subject of controversy due to media reports that former President Obasanjo himself owned shares in it. According to an *Associated Press* article from September 2006, Obasanjo confirmed that his private company owned 200 million shares in Transcorp. However, the trustees of the company reported that there was no conflict of interest because the President would have had no knowledge of the company’s shares in Transcorp or other investments because they were held in a blind trust.¹¹⁴ Global Witness wrote to Obasanjo and Transcorp and asked them to comment on these reports. We did not receive a response from either party.

Once Transcorp did not acquire OPL 291, the relevant Nigerian oil and gas regulatory authorities gave permission to Starcrest to swap its previously obtained oil block OPL 294 for oil block OPL 291.¹¹⁵ Due to the withdrawal of its initial technical partner, Starcrest sought and obtained the approval of the MPR to partner with Addax Oil and Gas Limited, a Canadian Swiss Oil firm.¹¹⁶ Starcrest entered into a Production Sharing Agreement with Addax in respect of OPL 291. Addax paid the US\$55 million signature bonus to the Nigerian Government.

The Addax deal was highly favourable to Starcrest. Not only did Addax pay the signature bonus owed to the government, but it agreed to pay Starcrest a farm-in fee¹¹⁷ of US\$35 million to acquire an interest

THE STORIES FROM NIGERIA SUGGEST THAT A GENUINE ATTEMPT TO REFORM A SYSTEM IN 2005, ALLOCATING LICENCES THROUGH OPEN BIDDING, MAY HAVE GONE ASTRAY.

in OPL 291.¹¹⁸ In reply to our letter regarding OPL 291, Addax stated that they paid a farm-in fee as “there was no other manner for Addax Petroleum to obtain an interest in OPL 291” since “they were not eligible to participate in the bidding round as the prevailing government policy of the time required indigenous Nigerian companies to bid.”¹¹⁹ In response to question regarding the farm-in fee, Addax state that the “farm-in was fully transparent, disclosed publicly at the time, and represented a good commercial opportunity for Addax Petroleum and its shareholders. The payment of a farm-in fee is standard practice in the industry.”¹²⁰

According to the MPR Letter: “there is nothing irregular about the transactions between Addax Petroleum/Starcrest as reassignments of oil licences are normal industry practice. It is also pertinent to note that farm-out payments between third parties are not normally brought to the attention of government, as government is not privy to such transactions and does not benefit from the same.”¹²¹ This may have been an accurate account of oil industry practices. Nevertheless, from the MPR letter it appears likely that, with the full agreement of the Nigerian government, Starcrest did not obtain OPL 291 in the bidding round which took place on 19th May 2006 but through a series of negotiations and correspondence with the MPR and the Minister of State for Petroleum Resources. This process seems to have taken place over several months and involved Transcorp but does not appear to have involved the other companies that had taken part in the bidding round in May 2006. It also appears, based on a Global Witness survey of media reports between May 2006 and October 2007, that the award of OPL 291 to Starcrest and Addax only became public knowledge in October 2006, when Addax reported that it had farmed into the licence. Starcrest, however, denies this account.

c. Nigeria’s Government steps in...

The May 2006 mini-round coincided with a highly charged period in Nigerian politics when supporters of President Obasanjo unsuccessfully campaigned to change the constitution to allow him to serve a third term as president. This campaign provoked a storm of protest in Nigeria and was sufficiently

troubling for the US government that it called for the adherence to presidential term limits.¹²² In May 2007, President Yar’Adua succeeded President Obasanjo, maintaining the rule of Obasanjo’s Peoples’ Democratic Party.

Following petitions from a competitor, three investigations into the circumstances of the allocation of OPL 291 were launched by the Inspector General of the Nigerian Police, the Ministry of Petroleum Resources and the Economic and Financial Crimes Commission (EFCC) respectively. After a petition from Starcrest to President Yar’Adua, the President asked the Minister of State for Energy (Petroleum) to provide him with a report on the matter.¹²³

In 2008, the ministry stated that there was no wrongdoing or breach of procedure in the processes leading to the award of OPL 291.¹²⁴ The President then issued a directive, on the basis of which the Ministry of Justice instructed the EFCC to stop the investigation, “as any further action to the contrary would amount to a violation of the directives of Mr. President as well as disregard for the Hon. Minister of State for Energy (Petroleum) who investigated the matter.”¹²⁵

In March 2008, a letter from a staff officer of the Inspector-General of Police to Starcrest informed them of the outcome of the investigation carried

out by the MPR, which had found that Starcrest and Addax had “validly acquired the partnership interest apportioned to them in the production sharing contract on OPL 291.”¹²⁶ Consequently the Inspector-General of Police’s investigation was closed. We understand that the EFCC investigation was later discontinued.

Legal representatives of Emeka Ofor told Global Witness that all investigations, including by the EFCC had “absolved Starcrest of any wrongdoing” and given “Starcrest a clean bill of health.”¹²⁷ In response to Global Witness’ questions regarding the relationship between Obasanjo and Ofor, the representatives clarified that “President Obasanjo, though a good friend of our client, never influenced (nor did any Nigerian government official), the award of OPL291 to Starcrest.”¹²⁷ They also stated that none of the fees paid to Starcrest Nigeria Energy were diverted to political recipients.

None of the above facts amount to evidence of illegality in the obtaining of OPL 291. However, it has not been fully explained why the government, which was committed to a policy of transparency and open bidding, authorised particular companies to swap the licences in negotiations that lasted several months after the date of the bidding itself.

It is also hard to see what services Starcrest Nigeria Energy could have performed to justify making such



Citizens shouldn’t have to go fishing for company information.

Corbis

a large profit on OPL 291 in a matter of months. If the licence was worth an extra US\$35 million in farm-in fees, this begs the question as to why the government did not give this licence a higher value estimate in the first place. Starcrest responded to our questions about the value they added by stating that they “made significant investment in exploring or developing the licence” and that it is “most unreasonable” to suspect that they had no intention of developing the licence in their own right.

CONCLUSION

The stories from Nigeria suggest that a genuine attempt to reform the system in 2005, by allocating licences through open bidding, may have gone astray. The bidding rounds in question did not turn out to be the break from the past that government officials had announced when they declared that bidding would be held according to the transparency principles of the EITI. A policy which grants preferential access to local investors is a good one if it favours local companies which are chosen fairly from an open field and have the ability and motivation to learn from their foreign partners. But a badly-managed or exploited policy can undermine other transparency efforts and reinforce existing suspicions that the oil industry in Nigeria is deeply corrupt. Whilst the information in this report does not amount to proof of illegality on the part of the individuals or companies named, it underlines significant concerns about the oil allocation process.

One lesson to learn from Nigeria is that even if the rules are good, they are meaningless if they are not

ONE LESSON TO LEARN IS THAT
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enforced. An open bidding process has little meaning if its outcomes are actually decided in private, away from the scrutiny of legislators, civil society groups and the public, or if the executive can simply override or ignore the rules in order to hand valuable public assets to companies. Even if bidding conferences are open to the public, if the government uses its executive power to create a parallel process taking decisions based on bilateral correspondence and negotiations, this would appear to discredit the whole rationale for holding a public bidding process in the first place.

There needs to be a major overhaul of the way in which oil and gas licences are allocated to companies in Nigeria. Decisions need to be taken in a transparent way to remove any risk of conflicts of interest on the part of government officials or donors to political parties and prevent licences from being ‘flipped’.

There are some reforms which, if taken and upheld by the government, could significantly reduce the risk of corruption. These reforms are consistent with the findings of the 2008 probe into licencing by the Nigerian parliament, the Nigerian EITI law and the spirit of the Petroleum Industry Bill, which is intended to make Nigeria’s oil sector more transparent and increase its value to Nigeria’s people.

RECOMMENDATIONS: NIGERIA

Nigerian policy makers should take these specific steps to improve transparency:

1. Ensure full transparency over the ultimate beneficial ownership of companies awarded oil licences

- The public agency responsible for overseeing oil licences should be required, by law, to publish a comprehensive list of all companies who obtain oil licences and their shareholders.
- This list should be updated at least annually so that any changes in the ownership of oil blocks are made known to the public. When farm-in fees are paid by one company to another, these fees should be disclosed to the public.
- Any government official found to be the ultimate beneficial owners of a company participating in the bidding for oil licences must provide, either to parliament or the Nigerian EITI, evidence that he or she is not using his or her position to obtain the oil licences.

2. Publication of oil licences, contracts and subcontracts, and continuous monitoring

- The rules for pre-qualification and bidding for oil licences should be published and independent monitors should be present at all stages of the licencing process, from the pre-qualification of companies, through the bidding process itself to the award of contracts.
- These independent monitors could be drawn from non-governmental organisations, independent experts, professional associations, trade unions and other bodies outside the state.
- If necessary, they should be empowered to present their findings to parliament and the public and call on the government to commence investigations. Once again, the Nigerian EITI (NEITI) would provide a logical home for this independent monitoring.
- All licences, contracts, and subcontracts, should be published, so as to make it easier for civil society groups and observers to determine that the terms of a contract are not unduly favourable to the company, and that the company is meeting these terms, especially if the company is owned or controlled by a government official.

3. Limit executive power to take decisions on licencing

- The power of the executive to decide which company gets which licence needs to be subject to effective and transparent oversight by parliament.
- The government should be required to publish an explanation for each licence award, which lists the factors underlying the decision.

4. Independently review existing oil licences

- There should be a comprehensive review by an independent third party, possibly an international firm, of all oil prospecting and oil licences in Nigeria.
- This review could be conducted under the auspices of the NEITI since the 2007 NEITI Act includes the allocation of oil acreages in its mandate.
- The review should determine the names and ultimate beneficial owners of all the companies which have interests in each oil licence, confirm that all payments due to the government have in fact been made and check that licence-holders are meeting all their legal and other commitments – for example, that a company which has obtained a licence on the basis of commitments to develop it is not simply sitting on the asset in the hope of selling it for a quick profit.
- The results of this independent review should be published in full.

5. Revoke unlawful licences

- Where it can be established that oil licences have not been obtained in a lawful manner, they should be revoked.
- To address suspicions that oil licences are being revoked simply as a way of transferring them from one set of vested interests to another, such decisions and the reasons for taking them should be explained in full to parliament and the public.

Companies working in Nigeria should do the following to improve transparency:

1. Ending the risk of foreign companies sustaining corruption in Nigeria

- Foreign oil companies should not go into partnership with any local companies whose ultimate beneficial ownership has not been made public, let alone any companies whose owners may include government officials.

CASE STUDIES: DEMOCRATIC REPUBLIC OF CONGO

MAJOR CONCERNS OVER SALES OF MINING ASSETS

Nowhere is this issue of offshore companies and opaque licensing more pressing and more dramatic than in Democratic Republic of Congo (DRC). The situation in the DRC also goes to show that these problems are not just limited to the oil industry: much of the DRC's problem concerns opaque allocation of mining concessions, sometimes having stripped international companies of those licences previously.

Despite a vast wealth of natural resources and a string of deals in recent years with international companies – including a US\$6 billion mines-for-infrastructure swap with Chinese state-owned firms – the DRC's citizens are desperately poor.¹²⁸ One in five children die before their fifth birthday and over half the population lives on less than US\$1.25 a day. The country ranks bottom on the UN's Human Development Index. It needs to earn revenues from its natural resources sector to develop.

In July and August 2011, news came out that DRC's state-owned mining companies Gécamines and Sodimico had sold stakes in four major mining sites – Frontier, Lonshi, Kansuki and Mutanda – without making the information public. These deals were carried out in secret earlier in the year with companies that were based in offshore tax havens, and which could thus keep their ownership a secret. Worse, this happened at a time when the government was nominally meant to be cooperating with the World Bank in implementing a number of promises on transparency and governance, grouped together under a document called the Economic Governance Matrix. The matrix itself was introduced in response to the earlier controversial confiscation of a major mining project and its subsequent sale onto a group of BVI-based companies in January 2010.

The sale of stakes in Frontier, Lonshi, Kansuki and Mutanda stoked controversy not just because of the secrecy involved, but also because the sales prices agreed were much lower than most reported commercial estimates of their value. The state mining companies conducting the sales have published virtually nothing in terms of financial information on what has happened to the sums officially received from the sales.

In such circumstances, and given the well-established risks of corruption in the DRC, there is an evident concern about the risk of embezzlement and significant losses of revenue to the country.

After news of the sales became public knowledge, the Government did publish some details, in the form of contracts related to Sodimico's sale of stakes in two mines – Frontier and Lonshi. These mines had been confiscated from international mining firm First Quantum, in circumstances First Quantum vigorously disputed.

Though it is commendable that the government published the contracts, this does not clear matters up. Many questions remain, including over the sales price. The International Monetary Fund (IMF) was sufficiently concerned by the sales to write to the DRC authorities for clarification. Sodimico stated, in a response to the IMF that was published on the website of the Congolese Ministry of Mines, that the 30 per cent stakes in Frontier and Lonshi had been sold for a total of US\$30 million.¹²⁹ But Bloomberg, the business news service, has cited research by two London-based securities firms that valued the two mines at more than US\$1.6 billion. If these estimates are accurate, then they would indicate that the stakes were sold for less than a sixteenth of their value.¹³⁰ This obviously raises profound questions about the rationale and commercial motives of the deal which cannot be addressed purely by the reporting of revenue flows under EITI rules. EITI reporting can only show what was actually paid for access to a natural resource asset, not whether the payment was proportionate to the value of that asset or not.

The whole episode, including the confiscation of Frontier and Lonshi, is worrying. Frontier is now in disuse and, according to a donor source, is flooded with water. Before its confiscation, the company was the largest taxpayer in the DRC, contributing some US\$70 million to state coffers and producing 84 per cent of the country's copper ore exports.¹³¹

The financial impact of the affair on the DRC will evidently be huge. In this kind of situation, the current reporting rules of the EITI would show only that revenues from a particular company have fallen from one year to the next. Even this assumes that the country concerned is applying disaggregated reporting: aggregated reporting, where different payments from different companies are lumped together under EITI, would reveal almost nothing about the cases discussed in this note, even though they go to the heart of the EITT's principles and aims.

Contracts have not been published for the sale of stakes in the two other mines – 20 per cent of Mutanda and 25 per cent of Kansuki. The stakes were sold to offshore companies associated with Dan Gertler, a businessman who is an associate of President Kabila.¹³² The sales price similarly raises questions. In October 2011, Gécamines reportedly confirmed the sale value of US\$137 million for both stakes in the mines, although in a response to the IMF Gécamines suggested that this represented the value of the stake in Mutanda mine only.

Gécamines reported that BNP Paribas valued the Mutanda stake at US\$108 million. However, the May 2011 share prospectus issued by Glencore (which owns shares in Mutanda via a subsidiary), contained an independent consultant's report commissioned by Glencore which valued Mutanda at over US\$3 billion:¹³³ this would value the 20 per cent stake in Mutanda sold by Gécamines at around US\$600 million.

Regarding Kansuki, Deutsche Bank said in a June 2011 report that Glencore's 37.5 per cent stake was worth US\$313 million: at the same valuation, the 25 per cent sold by Gécamines would be worth more than US\$200 million.¹³⁴

A spokesman for Mr Gertler told Global Witness that, although Mr Gertler and his companies had good relationships with the DRC leadership, they never enjoyed "free rides." He said that the sale price reflected the true value of the mining assets and disputed that the valuation figures for Mutanda and Kansuki were accurate assumptions of value.¹³⁵

Without official, published and verified information about the pricing of the sales, it is not possible to address the concern (denied by Mr Gertler's spokesman) that the assets may have been sold at well below their market value.

In November 2011, a UK Member of Parliament Eric Joyce, who chairs an All Party Parliamentary Group on the Great Lakes, raised general concerns over the secretive sales of mining assets in the DRC. Speaking about his wider concerns about the natural resource sector as a whole in DRC, Joyce argued that state losses could amount to approximately US\$5.5 billion. He complained that there appeared to be "a systemic pattern of underselling Congolese mining assets to off-shore 'shell' companies incorporated almost exclusively in the British Virgin Islands (BVI), the ultimate beneficial owners of which are often unknown, with the result that the Congolese people do not benefit from the vast mineral wealth in their country".¹³⁶

Joyce continued: "The UK government alone will contribute £700m in aid in the next 4 years. At a

time of austerity at home we must be certain this is money well spent. This evidence shows that UK taxpayers' money is being poured into a country where billions in tax revenue and mineral assets are being diverted from the people."¹³⁶

Opaque asset allocation procedures have also characterised the oil sector in DRC. Two previously unknown oil companies, Caprikat Ltd. and Foxwhelp Ltd., both also registered in the British Virgin Islands, were granted rights to two untapped oil blocks in north-eastern Congo by a June 2010 presidential decree. It is unclear on what basis the two companies were selected or who their beneficial owners are. The decision came despite the government already awarding the blocks multiple times to other companies, with signature bonuses apparently totalling US\$3 million, though Global Witness is not aware that Presidential decrees ratifying the earlier awards were made.¹³⁷ Although we do not comment here on the sales price of these oil assets, the lack of transparency surrounding the mechanisms through which these licences were awarded does not provide for any public scrutiny.

The DRC has taken some steps to improve transparency in the extractive sector. However unless there is a global consensus towards transparency in licence allocation across all sectors, key questions will remain as to the true beneficiaries of these deals. Public disclosure of the ultimate beneficial ownership of all companies that bid for mining licences must become a norm, in addition to clear and transparent bidding rules and criteria that enable legislators, the media, civil society groups and other concerned citizens to determine why a particular company won a particular asset and what the financial benefits of the deal are, both to the state and to the company itself. Transparency is not an end in itself, but a means of ensuring greater public scrutiny of the allocation of mining contracts in the DRC and deterring corruption and fraud by exposing it to sunlight.

*As this report went to press, First Quantum and Eurasian Natural Resources Corporation (ENRC) issued statements saying that they had reached a US\$1.25 billion agreement over disputed mining projects. The agreement – which the parties announced on 5th January 2012 and expect to finalise by the end of February – involves ENRC buying the First Quantum companies that had controlled the Frontier and Lonshi mines prior to their confiscation, as well as ENRC purchasing other key First Quantum subsidiaries and settlement of all claims in relation to First Quantum's DRC operations. ENRC said in its press release on the agreement that it anticipates bringing Frontier back to production within 18 months. Global Witness reserves any comment on the deal until further details are made clear.*¹³⁹

CONCLUSION & RECOMMENDATIONS

CONCLUSION

The allocation of oil or mining rights to companies by governments around the world is often at risk of being compromised by serious corruption, which brings with it a chain of consequences from entrenched poverty and development failures to political instability and armed conflict.

Even where a country has adopted competitive bidding and taken some steps towards public disclosure of the revenues that flow to the state from oil, gas or mining, there is still a risk that corruption could take new forms, such as the abuse of the licencing process to favour shell companies controlled by government officials or their proxies.



Associated Press

Our recommendations and Checklist provide the stepping stones to transparency.

Along with efforts to improve revenue visibility, governments need to improve transparency in the allocation of oil and gas licences. An ‘open’ bidding process has little meaning if its outcomes are decided away from the scrutiny of legislators, civil society groups and the public, or if the executive can override or ignore the rules in order to hand valuable public assets to companies whose beneficial ownership is highly opaque.

Based on Global Witness’ research over the last 15 years across numerous oil rich but desperately poor countries globally two main issues seem to predominate.

Firstly, all companies involved in bidding rounds for oil licences, or that hold oil licences should fully disclose their ultimate beneficial owners. This level of transparency provides government and the public with the opportunity to begin to dispel suspicions that government officials may be benefitting illicitly from the allocation of oil licences. Additionally, the terms of all licences and contracts should be published to make it easier for the appropriate authorities and the public to determine that the terms of a contract are not unduly favourable to a company.

Secondly, we argue that foreign companies should not go into partnership with local companies in any case where there is reason to suspect that the local company’s beneficiaries may include government officials who are taking advantage of their positions to enrich themselves. If a multinational company enters into an oil or mining joint venture with a local company in a developing country, knowing that the latter’s ultimate beneficiaries are likely to include corrupt government officials, then the result could be that the latter makes substantial profits from the work of the multinational without making any significant contribution to the venture itself. In other words, value will have been created by the multinational, then collected by the corrupt official, without any cash changing hands. Thus, it is arguable that such arrangements may obey the letter of anti-corruption laws but, in practice, may violate their spirit.

This report is underpinned by a simple truth: the scramble for oil and minerals has often been hugely destructive in poor countries and, by encouraging

WE ARGUE THAT FOREIGN COMPANIES SHOULD NOT GO INTO PARTNERSHIP WITH LOCAL COMPANIES IN ANY CASE WHERE THERE IS REASON TO SUSPECT THAT THE LOCAL COMPANY’S BENEFICIARIES MAY INCLUDE GOVERNMENT OFFICIALS WHO ARE TAKING ADVANTAGE OF THEIR POSITIONS TO ENRICH THEMSELVES.

corruption, has contributed to massive human misery and governmental failure. This situation could change for the better, but only if governments and companies, in the world’s major economies as well as in poor countries, recognise a shared long-term interest in open, fair and sustainable trade in natural resources, which is based on transparency and the accountability of those in power to the citizens who are the rightful owners of these resources.

The oil, gas and mining industries can be very complex, covering many thousands of companies from giant multinationals to tiny local firms. There can be big differences in licencing and contractual arrangements, not just between oil, gas and mining but within each sector, between one country and another and between different generations of contracts in the same country. And very little of the information that actually shows how resource rights are won, and where the benefits go, is available to the public.

Unless and until this happens, pledges of greater transparency in the extractive sector will have little meaning, especially in countries like Angola, Nigeria and the DRC with a documented history of corruption. Much better transparency and oversight is needed in corporate ownership and government decision-making to reduce the potential for corruption so that poverty-stricken but resource-rich countries can use their vast oil wealth to foster development and reduce poverty.

Given this complexity and opacity, how can citizens of resource-rich countries be sure that companies are winning access to their extractive resources in a manner which is free from corruption, and that the resulting agreements are fair to the country and not unduly tilted towards companies? To answer this question, Global Witness has conducted more than a year of research and discussions with civil society

activists, industry officials, academic and international financial experts. Our recommendations and ‘Citizens’ Checklist’ in the following sections attempt to set out how this can be achieved with respect to the allocation of all natural resources licences. The Checklist has also been incorporated into parts of the Natural Resource Charter, which has been developed since 2008 by academics and civil society activists. Led by the development economist Paul Collier, it sets out a broader path for the management of natural resources in developing countries and focuses on assisting reformist government officials.

RECOMMENDATIONS: ALL COUNTRIES

Better transparency and accountability

Governments must increase transparency and accountability around bidding processes and the issuing of natural resource contracts. Both the international community and individual countries should agree to deepen and broaden transparency measures and agreements to cover the issuing of licences for resource extraction. Specifically:

- Countries rich in natural resources should adopt systems of open and publicly accountable bidding for natural resource licences and use them consistently, as recommended in our Citizens’ Checklist;
- The EITI should be extended to cover the processes by which exploration and production rights for natural resources are awarded and to cover beneficial ownership of extractive companies so that the ownership of companies is made explicit;
- The fullest possible disclosure of information and active oversight of the licencing process by independent observers and domestic civil society groups should be mainstreamed into the EITI;
- The World Bank and the IMF, regional development banks, export credit agencies and other international bodies should systematically promote an international norm of openness. Public accountability in the allocation of licences should be mainstreamed into their lending and technical assistance portfolios; and
- The OECD countries should further develop their anti-corruption laws to include a test on whether or not a gift has been awarded, through pay-off or reverse gift structures. This should include an obligation to verify whether the local partner has provided added-value or a genuine service for any payment that it has received.

A CITIZENS' CHECKLIST¹³⁸

PREVENTING CORRUPTION IN THE AWARD OF OIL, GAS AND MINING LICENCES

Citizens and their representative community organisations need to be able to hold their governments accountable at the point at which natural resource licences and contracts are issued.

Based on the investigative findings in this report and in discussion with civil society activists, academics, industry and international financial experts and others concerned with corruption issues, Global Witness has compiled a Citizens' Checklist which makes recommendations as to how citizens can hold their governments to account at the crucially important point when extractive companies negotiate for access to rights for natural resources.

The Checklist also forms a blueprint for the policies of governments in resource-rich countries and the international financial institutions that provide them with aid and technical assistance. It also sets out benchmarks that civil society groups in resource-rich countries can use to assess whether their own governments are doing all that they can to ensure transparency in the natural resource licencing process.

The key feature of the Checklist is a need for clear rules and effective institutions, openness and full public disclosure throughout the allocation of licences, combined with continuous oversight by independent third parties. The aim is to ensure that companies that win licences are qualified to do so, have done so honestly and fairly, do not represent the interests of corrupt officials and will actually meet the terms of their licences, rather than simply squatting on them with the aim of selling on the licences for an easy profit.

We recommend that citizens in Angola, Nigeria and the DRC follow the principles of the Citizens' Checklist to push for the disclosure of the beneficial ownership of companies and to encourage governments to regulate for transparency in the licencing process.

What needs to happen before oil, gas and mineral licences are awarded to companies:

- ❑ **1.** A country needs to have a long-term fiscal, contractual and regulatory strategy for managing its potential or available natural resource base to secure the greatest social and economic benefit for its current and future citizens, rather than handing out licences ad-hoc in response to short-term political pressures. To have public legitimacy, this strategy needs to be prepared openly and after public consultations.

The aims of the strategy should be to:

- a. gain full information on the country's potential or available resource base, so that the government can negotiate with companies from a well-informed position;
- b. evaluate when and if to develop a country's potential or available resource base;
- c. develop strategies so that the extractive sector is used as a catalyst for the economy to produce, for example, in-country processing and industries in related services;
- d. maximise the longer-term benefits to the country and its citizens, rather than placing undue weight on getting upfront payments by companies (such as signature bonuses) which usually amount to a small fraction of the value of an oil or mineral deposit; and
- e. apply the highest standards of social, environmental, health, safety and human rights protections and identify regions where extraction should not take place, so as to minimise the damage of resource extraction on local communities and public goods such as the environment.

- ❑ **2.** The laws and public institutions to regulate manage and oversee the natural resource sector need to be in place before companies are granted access to the sector. These institutions need

to be strong and independent enough to resist corruption and protect the public interest, so they should:

- a. have political support for adherence to the rule of law;
- b. have distinct roles that are clearly defined in law;
- c. have sufficient funds, expertise and regulatory power to fulfil their mandates; and
- d. be managed and independently audited in a transparent fashion.

- ❑ **3.** The laws governing these public institutions should prevent conflicts of interest and forbid corruption. State-controlled extractive companies should not act as regulators because this concentration of power creates conflicts of interest and invites corruption.

- ❑ **4.** The strategy, laws, institutions and policies on the extractive sector should be crafted through open debate and discussed and approved by the country's legislature. All resulting documentation should be easily available to the public in an accessible form.

- ❑ **5.** Laws should have a strong bias in favour of promoting openness, preventing public officials from favouring companies in which they or their relatives and proxies may have a financial interest, and against confidentiality and secrecy.

The awarding of oil or mineral rights:

- ❑ **6.** Open and competitive bidding, based on equal treatment of bidders and observable or verified bid variables, should be the norm for awarding oil, gas and mining rights. This rule should also be applied in cases where bidders offer investments in downstream industries, or in public infrastructure, as part of their bids. There should be dispensation for sole source contracts for legally pre-defined reasons, including proprietary skills. It should be acknowledged however, that competitive bidding might not work for small scale or artisanal mining.

- ❑ **7.** In exceptional cases like small scale or artisanal mining where open bidding may not

be feasible, the public agency responsible for the award of rights should be required by law to justify the exception to both the legislature and the public.

- ❑ **8.** Countries should make survey work and geological conditions on oil, gas and mining rights available to bidders.

- ❑ **9.** The same terms should be offered to all companies. No prospective bidder for the same licence should be offered preferential rights, access to information or other preferential treatment.

- ❑ **10.** The terms governing contracts to be awarded should be as clear and simple as possible to ensure that the public can oversee and monitor the awarding of licences. The terms should be set out in law or regulation to the greatest extent possible, because more complex contracts are harder to oversee and monitor. For example, model contracts that have been subject to a detailed legal review could be used as a template for negotiating bids during the allocation process.

- ❑ **11.** Where negotiation is allowed for particular contract terms, the parameters for what can be negotiated should be published beforehand.

- ❑ **12.** The public agency responsible for awarding oil, gas or mining rights should not allow any company to pre-qualify to bid for such rights, whether as a sole operator or a member of a consortium, until this agency has confirmed that the company has:

- a. published its ultimate beneficial ownership and audited accounts;
- b. proved its technical competence and financial capability to fulfil the terms of the contract;
- c. proved that it can obtain sufficient funds, from legitimate sources, to meet the terms of the contract;
- d. not previously been responsible for corruption, human rights abuses or the illegal destruction of the natural environment or any other criminal activities;

e. identified the key personnel who will oversee its work under the contract; and

f. identified the terms of negotiation for any foreseeable subcontract that is needed.

Any companies found to be involved in collusion with public officials to obtain a licence should be disqualified from the process.

13. The same rules should apply to all companies seeking to acquire oil, gas or mining rights, including domestic companies that take part in bidding under “local content” rules.

14. The public agency responsible for awarding oil, gas and mining rights should keep companies informed as to the physical security in the licence area.

15. The right to exploit, post-exploration phase, should be dependent on the completion and review of social and environmental impact assessments by an appropriately skilled and independent third party.

16. Companies that buy into oil, gas or mining rights that have already been acquired by other companies, for example via “farm-ins” or corporate mergers, should also be required to provide the information in points 12 a-f above.

17. The pre-qualification of bidders should be cross-checked by an independent third party to confirm that the above requirements are fully met.

18. Bidding should take place against a reasonable timetable which is disclosed to the public, and bidding outside such a timetable should not be allowed. In cases where unforeseen external factors mean that an extension is reasonably necessary, the government should publicise this, and explain why such an extension is needed.

19. The fullest possible information should be published through broadcast and open media. The following information should be published:

a. tender documents;

b. lists of pre-qualified companies, accompanied by evidence of 12 a-f above;

c. successful and unsuccessful bids;

d. contracts, subcontracts, other agreements signed with extractive companies and their associated data;

e. independent audit reports of financial transactions related to licencing and sales; and

f. confirmation from the agency overseeing the award of rights (see Continuous Oversight, below) that all pre-qualified companies have complied with all the rules.

20. Companies should publish their payments to governments in an accessible database on a project-by-project basis, in each country where they have any oil, gas or mineral exploration, development, production, transport, refining, or marketing activity. A project is defined as one that originates at the level of the licence, production-sharing agreement, lease or other such agreement. Payments that originate at the country or entity level such as corporate income tax should be reported at that level.

21. Companies must make the above payments for oil and mining rights into bona-fide government accounts, which are linked to the national budget.

22. Countries’ receipts of such payments should be independently audited and disclosed in an accessible database to the public in full, for example through the Extractive Industries Transparency Initiative (EITI).

23. To reduce the risk of bidders paying bribes to corrupt officials via third parties such as subcontractors, companies should be required to publicly disclose their relationships with any agents, consultants, local partners or other third parties that help them to win access to oil or mining rights. Disclosures should include:

a. the identities of the ultimate beneficial owners of the third party and the nature of its expertise;

b. the reasons why the company chose to work with the third party and the nature of the help that the company is receiving from it; and

c. full details of any payments or other benefits provided to the third party by the company.

24. Contracts, licences and other agreements signed between companies and governments and between companies and third parties should be published in full, so the public can see that they are fair and have been honestly obtained. Redactions should only be allowed for specific information, for time-limited periods, in cases where companies or the government can demonstrate to the public that the need for confidentiality genuinely outweighs the public interest in disclosure.

25. There should be a comprehensive and regularly updated list, easily accessible to the public, of which companies hold which rights in each project, as defined in 20, in each country. This list should name all the partners in a licence and note any changes of ownership.

Continuous oversight:

26. There needs to be continuous oversight by an independent public agency of the award of rights and the implementation of contracts and subcontracts by companies. This is to ensure that bidding has been honest and fair and that companies are meeting the highest standards of transparency, public accountability, and social and environmental protection. This agency needs sufficient authority, resources and expertise to carry out its task and should make regular and timely public reports.

27. Independent civil society groups should be actively involved in the oversight of the oil, gas or mining sectors at all stages of the resource value chain, for example by working with public oversight agencies, or through their role in the multi-stakeholder groups of the EITI.

28. Countries, whether through the host government, extractive companies or local not-for-profit organisations, should also build capacity for independent civil society groups through offering training and workshops.

29. Countries rich in oil, gas or minerals should implement the EITI and their multi-stakeholder groups should agree to extend its remit to the

allocation of exploration and exploitation rights, as has already happened in Nigeria and Liberia.

30. A country’s legislature, oversight and law enforcement agencies should have a right of access to all information on the award of oil, gas and mining rights.

31. Credible allegations of corruption should automatically lead to independent investigation. Proven corruption should bring serious civil and criminal penalties for any companies, company employees and government officials who are implicated, including the cancellation of contracts and publication of findings. If local laws allow the ownership by a government official of a company participating in the bidding of oil, gas or mineral licencing, any government official found to be the ultimate beneficial owner of such a company must provide evidence that he or she is not using his or her position to benefit from the allocation of such licences.

32. All contracts and other agreements governing oil, gas and mining rights should explicitly forbid corrupt acts, human rights violations and environmental offences as defined in national and international law.

33. The shareholders of multinational extractive companies should insist that these companies adopt the highest ethical standards in their bidding for oil, gas and mining rights and ensure that their affiliates and local partners in resource-rich countries do the same.

Actions for home governments of extractive companies:

34. The home governments of multinational companies that seek access to oil, gas or mining rights should work to combat corruption by:

a. using their fiscal and regulatory powers to ensure that such companies disclose their revenue payments to governments around the world, on a country-by-country and a project-by-project basis;

b. implementing and consistently and pro-actively enforcing bribery laws that cover bribing another person or entity, being bribed

(as the recipient of the bribe), bribing a foreign public official and failure to prevent bribery;

c. implementing and consistently and pro-actively enforcing laws against the laundering of the proceeds of foreign corruption;

d. establishing laws to protect whistleblowers;

e. working with the international community to end secrecy over the ultimate beneficial ownership of extractive companies, especially in offshore jurisdictions, to prevent shell companies being used by corrupt officials;

f. working to coordinate policy efforts, particularly through the G-20, to tighten regulation of illicit financial flows through international banks;

g. refraining from actions that undermine transparency and accountability, such as pressuring resource-rich countries to give undue preference to “our” companies or blocking the renegotiation of contracts, in cases where there is evidence that the contracts were not legal under local law, for instance if they were obtained corruptly or included abnormally low market prices;

h. providing independent civil society with a formal forum in which to express their findings, concerns, and recommendations related to the extractive sector; and

i. endorsing and implementing the EITI and supporting extending the remit of the EITI to cover the allocation of oil, gas and mineral rights.

International actions to curb corruption:

35. International donors (governmental and private sector) should jointly evaluate whether development assistance is still needed, and for what timeframe, in light of the findings of point 1a.

36. International financial institutions and bilateral donors that work with resource-rich countries should use their aid, loans and technical assistance to ensure that the practices listed in this Checklist are in place before these countries grant access to their oil, gas or mineral reserves.

ADDITIONAL NOTES:

The oil, gas and mining industries are vastly complex, including many thousands of companies from giant multinationals to tiny local firms. There can be big differences in licencing and contractual arrangements, not just between oil, gas and mining but within each sector, between one country and another and between different generations of contracts in the same country. Very little information is revealed to the public on how resource rights are won and who benefits.

Because the oil, gas and mining industries are so complex, any set of principles has to be general in nature and the findings of the Checklist may need to be adapted to specific circumstances. For example, licences to explore for oil and gas (which can then be converted into production rights) are often awarded on the basis of auctions. In mining countries, by contrast, a “first-come-first-served” system is more usual. Mining exploration often takes place across vast areas where the chance of finding commercially exploitable mineral deposits may be quite small. For this reason, it may be difficult to attract enough bidders at one time to offer exploration rights by auction. But where a commercial-sized mineral deposit is already known to exist, bidding is appropriate. Therefore, it is important to take into account that the design of the allocation mechanism may differ across resource types and geological conditions.

The recommendations of the Checklist could also be adapted to resources-for-infrastructure deals. For example, a government could present bidders with a list of public infrastructure projects that it wants built, all of them with cost estimates provided by independent experts. Bidders could then compete on the basis of which projects they will undertake in return for being granted oil or mineral exploitation rights. The volume of oil or minerals that can be exported by winning bidders, along with benchmark prices, need to be publicly disclosed so citizens can be sure that these deals are fair. The important point is that rights be awarded in a transparent and rule-bound way, subject to independent oversight by third parties.

ENDNOTES

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