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The Riddle of the Sphynx: where has Congo's oil money gone?

Executive Summary

In a world of ever-increasing energy demand, West Africa is growing in importance as a supplier of oil to the global market.¹ The rising significance of West African oil and gas-producing states has led, in turn, to growing international concern about the effect of corrupt or poor management of oil revenues on the region's stability and prosperity and on the wellbeing of its people.

The Republic of Congo (ROC) provides a clear example of the way mismanagement of oil wealth not only fails to make countries richer, but can entrench corruption and instability. Despite earning almost one billion dollars in oil revenues in 2004, the country remains one of the poorest and most indebted in the world, and the scene of several bloody civil wars.²

The ROC is attempting to persuade its official creditors, led by the World Bank and IMF, that the country should be given debt relief through the Highly Indebted Poor Countries (HIPC) programme. To this end, the government has allowed publication of a large amount of oil data, including several independent audits of the state oil company Société Nationale des Pétroles du Congo (SNPC) by KPMG, the accounting firm.³ Yet these audits, far from shedding light on how Congo's oil industry works, have only revealed how much cannot be explained. Crucially, the ROC government has not acted on the recommendations of the auditors to address the structural failings in the state oil company's management of Congo's oil.

Investigations by Global Witness and information disclosed through court actions taken by private creditors seeking to seize Congo's assets in the UK, USA and France have revealed systemic and troubling discrepancies in ROC's oil accounts.⁴ This raises serious questions

¹ See the Energy Information Agency's International Energy Outlook 2005 <http://www.eia.doe.gov/oiaf/ieo/oil.html>

² Around 70% of Congo's population live under the poverty line (World Bank ROC, Country Brief, April 2005). Oil accounts for around 65-70% of Congo's income and its external debt currently stands at \$8.35 billion (end 2003). See IMF, *Republic of Congo: First Review Under the Poverty Reduction and Growth Facility, and Requests for Waiver of Performance Criteria and Modification of Performance Criterion - Staff Report; Staff Statement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for the Republic of Congo*, August 25, 2005, p. 15. Government oil revenues in 2004 reached approximately \$970 million (515 billion CFA). Ibid, p. 31. According to data published in the Reconciliation for 2004, projected revenue will reach \$1.49 billion (793 billion CFA) by end 2005. See http://www.mefb-cg.org/petrole/certification_concordance.htm.

³ See http://www.mefb-cg.org/petrole/gouv_transp.htm

⁴ Creditors such as Kensington International, FG Hemisphere, Walker International Holdings and the Connecticut Bank of Commerce are owners of secondary debt who have obtained judgements against ROC for non-payment of debt: '(Kensington) obtained four judgments against the Republic of the Congo (the Congo) between 20 December 2002 and 28 January 2003 in relation to sums due under various loan and credit agreements [...] The judgments remain unsatisfied in their entirety' (Approved Judgement of the Honourable Mr Justice Cooke between Kensington International and the

about the government's willingness to truly reform its finances at a time when it is trying to convince the international community that it merits debt relief.

The most recent revelations emerged from a UK High Court judgement on 28 November 2005, in a case taken by a creditor of Congo to seize the proceeds of oil cargos sold to international trading company Glencore in March 2005. The judgement describes how senior Congolese officials were involved in selling the state's oil through an elaborate web of offshore trading companies. According to the judgement, the primary aim of this structure appears to be to keep oil revenues out of the hands of creditors trying to seize SNPC's assets.⁵

The High Court judgement identified at least US\$472 million of Congo's oil revenues passing through two of these companies, Sphynx Bermuda and Africa Oil and Gas Corporation (AOGC) (para. 89). Most of the profits from sales ended up in the bank accounts of AOGC (para 89). This system of front companies was single-handedly controlled by Denis Gokana, who supervised the sales both while he was a special adviser to the Congolese President and in his current position as Head of the SNPC (para. 198). According to the High Court judgement, Gokana misled the court about his role in the scheme (paras. 17 & 18). Global Witness has written to Denis Gokana, asking for clarification of his role in all three companies, but to date has received no response. We have also attempted to contact him directly, via telephone on several occasions. He has so far declined to speak with us to explain his role and shed light on the unanswered questions.

On the basis of extrapolation from the profit made on one cargo sold by the SNPC to a Gokana company which then sold it on to an independent trading company in June 2005, Global Witness estimates some US\$30-40 million in value at least may have been transferred to these companies from the public purse. In addition, Gokana-controlled companies made short term loans to the SNPC at very high costs, further draining the state's resources (see below). Finally, one of these companies has recently been awarded a lucrative interest in a Congolese oilfield.

Global Witness believes that the use of such a structure to sell oil and to obtain short-term financing fits a pattern where, in recent years, SNPC has put in place increasingly convoluted structures to sell Congo's oil and to receive loans - largely it appears to prevent loan proceeds or oil serving as collateral from being seized by aggressive creditors, as has occurred in the

Republic of Congo in the High Court of Justice, Queens Bench Division, Commercial Court, Royal Court of Justice, Strand, London on 28 November 2005. Case number FOLIO 2002 NOS 1088, 1281, 1282 & 1357). Since 1999, such companies have tried to seize assets belonging to state-owned companies, one of which is the SNPC after judgements in Paris and London confirming that SNPC is an emanation of the state. See for instance Paris Appeals Court judgment, 8th Chamber, section B, 2002/03187, SNPC vs. Connecticut Bank of Commerce 28 January 2003 (Global Witness' document).

⁵ See para. 199, Approved Judgement of the Honourable Mr Justice Cooke between Kensington International and the Republic of Congo in the High Court of Justice, Queens Bench Division, Commercial Court, Royal Court of Justice, Strand, London on 28 November 2005. Case number FOLIO 2002 NOS 1088, 1281, 1282 & 1357. Henceforth this document will be referred to as 'the November 2005 Kensington judgement' and paragraph references will be included in parentheses in the text. In its August 2005 report, the IMF referred to the proceeds of a cargo from March for which payment had not been received by SNPC in June because it appeared to be subject to litigation. See IMF, *Republic of Congo: First Review Under the Poverty Reduction and Growth Facility, and Requests for Waiver of Performance Criteria and Modification of Performance Criterion - Staff Report; Staff Statement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for the Republic of Congo*, August 25, 2005, p. 70 <http://www.imf.org/external/pubs/ft/scr/2005/cr05301.pdf>

recent case of the Glencore cargos - as a leaked memo from SNPC's Parisian lawyers in 2003 confirms.⁶

ROC's external indebtedness of US\$8.35 billion is one of the highest in the world.⁷ A major reason for this is the government's historical reliance on oil-backed lending.⁸ Loans backed by natural resources such as oil are frequently taken out by governments in resource-rich but poor countries like Congo. They inherently lack transparency, since governments are not required to report whether and on what terms the loans have been made, nor to disclose the proposed uses of the funds, let alone track how the money is used. This combined with the high costs of such borrowing means oil-backed loans undermine sustainable development in poor countries by creating an environment in which corruption and mismanagement of public funds can flourish.⁹

The government promised under an IMF programme to stop this practice in 2001 and repeated the promise in 2002 and 2003.¹⁰ Another legal action brought against SNPC by Kensington in the US identified loans with a value of US\$650m being repaid with oil worth US\$1.4bn during the period 1999 to 2003.¹¹ Current oil-backed debt is estimated by the IMF to stand at \$US481 million (or 6% of the total): however, this excludes debt owed by the SNPC, about which there appears to be little clarity. According to the IMF, 'key questions

⁶ **Time for Transparency** March 2004, Chapter on ROC discusses a leaked memorandum prepared by SNPC's Parisian lawyers Cleary Gottlieb on 23 May 2003 to Bruno Itoua (ex-Head of SNPC) in relation to a proposed US\$210 million loan to be routed via a Special Purpose Vehicle (SPV) up in the Cayman Islands: 'The choice of legal structure was made as a result of the following considerations. In order to protect their rights to the petrol, whose sales revenues by SNPC will be used to repay the loan, the lenders have suggested to place between them and SNPC an independent legal entity that would be the owner of these rights, the SPV. The creditors of the Republic of Congo and/or SNPC would thus in principal be prevented from seizing this petrol from the hands of SNPC....' See Global Witness **Time for Transparency** March 2004, Chapter on ROC; also *La Lettre du Continent*. March 2003. Profession: Avocats du pétrole. Memo to Itoua, dated 16 May 2002 & Expenses note.

⁷ See IMF, *Republic of Congo: First Review Under the Poverty Reduction and Growth Facility, and Requests for Waiver of Performance Criteria and Modification of Performance Criterion - Staff Report; Staff Statement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for the Republic of Congo*, August 25, 2005, p. 15; <http://www.imf.org/external/pubs/ft/scr/2005/cr05301.pdf>

⁸ According to the IMF, from 1995-2000, some 75% of ROC's borrowing was oil-backed. IMF. 2001. *Article IV Report on the Republic of Congo*, p.33. For further discussion see Global Witness **Time for Transparency** March 2004, Chapter on ROC.

⁹ The IMF has expressed concern regarding resource-backed lending, including the opportunities it creates for corruption, the fiscal constraints that can result, the effect on countries' ability to access international capital markets and the high costs of borrowing associated with the loans. See International Monetary Fund, *Assessing Public Sector Borrowing Collateralised on Future Flow Receivables*, (June 2003). Several governments have been required to make commitments to cease such borrowing under IMF assistance programs, including ROC.

¹⁰ See, for example, International Monetary Fund (IMF). 11 April 2003. *Republic of Congo: Staff Monitored Programme Letter of Intent*.

¹¹ May 27 2005 RICO complaint filed by Kensington International Ltd against SNPC, BNP Paribas and Bruno Itoua, former head of SNPC in the United States District Court Southern District of New York (05 CV 5101); according to the ROC authorities, no loans of over 1 year have been taken out since October 2002, see *Republic of Congo: First Review Under the Poverty Reduction and Growth Facility, and Requests for Waiver of Performance Criteria and Modification of Performance Criterion - Staff Report; Staff Statement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for the Republic of Congo*, August 25, 2005, p. 74.

have yet to be answered as regards the SNPC's advance accounts',¹² and the Congolese debt office does not yet have the capacity to track and report accurately on the country's debt.¹³

Under the terms of its current IMF agreement, ROC is supposed to desist from contracting oil-backed debt except in the form of prepayments ('pré-paiements') or short-term advances from oil traders to be repaid before the end of the year in which they are contracted.¹⁴ According to information on SNPC's financial transactions on behalf of the government published on the government website, ROC ceased short-term financing in July 2004 and no further prepayments are listed. Nonetheless, according to KPMG's certifications prepayments are continuing unabatedly.¹⁵

The recent revelations about the use of shell companies to sell oil, despite the government's stated commitment to reform its finances, is reminiscent of past oil deals about which Global Witness has expressed concern. In 2003, for instance, a 65% interest in the Likouala oilfield, valued at \$160 million, was transferred by Total, the French oil company, to ROC and then immediately transferred on to a shell company, Likouala S.A, itself owned by another company registered in a tax haven. According to a ROC government press statement,¹⁶ Likouala SA belongs either to ROC, SNPC or Total and thus the deal cannot have been an arms-length transaction. Total wrote in its 2003 Annual Report that it had ceded its interest in the Likouala concession, and confirmed by letter to Global Witness that it 'holds no interest in Likouala SA'.¹⁷ If the statements by the ROC government and Total are correct then, by implication, the ROC government must be the owner.¹⁸

Nevertheless, the deal was done with the knowledge of Total, the original shareholder and continuing operator of the field. As part of this transaction, Likouala S.A. obtained an US\$80 million oil-backed loan with which to pay ROC. At the time, the ROC had committed to abstain from contracting any new long-term oil-collateralized debt. If ROC is the owner of Likouala S.A., this deal would have directly contravened ROC's IMF commitments not to seek any further oil-backed loans.¹⁹ Additional support for the hypothesis that the loan to Likouala SA is really a loan to the ROC government comes from a draft of the agreement between Total, ROC and Likouala S.A. obtained by Global Witness. This draft states that ROC's share of excess oil has been assigned to Likouala S.A. for the purposes of repaying this loan.²⁰

¹² See *Republic of Congo: First Review Under the Poverty Reduction and Growth Facility, and Requests for Waiver of Performance Criteria and Modification of Performance Criterion - Staff Report; Staff Statement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for the Republic of Congo*, August 25, 2005, p. 15. On p. 46, para. 23 it is stated that the IMF/World Bank are still analysing SNPC's financial liabilities and that 'key questions have yet to be answered as regards the SNPC's advance accounts'. See also *IMF HIPC Enhanced Heavily Indebted Poor Countries (HIPC) Initiative - Preliminary Document*, November 02, 2005, p. 18, para. 33; <http://www.imf.org/external/pubs/ft/scr/2005/cr05391.pdf>

¹³ *IMF HIPC Enhanced Heavily Indebted Poor Countries (HIPC) Initiative - Preliminary Document*, November 02, 2005, p. 41, Appendix II, 'Debt Management Capacity'.

¹⁴ *Republic of Congo: Review of Performance Under the Staff-Monitored Program and Request for a Three-Year Arrangement Under the Poverty Reduction and Growth Facility--Staff Report; Staff Statement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for the Republic of Congo*, p. 67, Appendix I, Attachment III, Technical Memorandum of Understanding, Quantitative Performance Criteria.

¹⁵ In Q3 and Q4 2004 and Q1 2005, see http://www.mefb-cg.org/petrole/certification_concordance.htm

¹⁶ <http://www.mefb-cg.org/actualites/page16.htm>

¹⁷ Letter from Total to Global Witness, 18 March 2004.

¹⁸ See Global Witness *Republic of Congo Transparency Scorecard*, 15 August 2005 and discussion in **Time for Transparency**, Chapter on ROC, March 2004.

¹⁹ <http://www.imf.org/external/pubs/ft/scr/2004/cr04232.pdf>, Box 4, p. 13.

²⁰ Global Witness documents. See also **Time for Transparency**, March 2004, pp. 24-26.

In the November 2005 Kensington judgement, the court has issued its view that senior Congolese government officials tried to deceive the country's creditors by creating a chain of front companies: 'Those involved in creating and masterminding the use of the structure were dishonest in the relevant sense of the word because of this objective when creating and using the sham companies and transactions in question, to avoid enforcement of existing liabilities' (para 201, v; see also paras. 198-201). The main mastermind behind the scheme, Denis Gokana, is a close adviser of Congolese president Denis Sassou Nguesso and also worked directly with. Sassou Nguesso's son Denis Christel who was also involved in the sham oil sales due to his position at the helm of SNPC's trading arm, SNPC UK and then after its demise, as head of a new marketing arm, Cotrade (paras. 41, 129, 154 & 155).

According to the judgement, 'if Mr Gokana had been in genuine negotiations with Cotrade, there was not only a conflict of interest on his part but he was in flagrant breach of the [SNPC] byelaws, as Mr Christel would have known' (para. 154). Why did Christel Sassou Nguesso fail to note the glaring conflict of interest inherent in selling state oil to private companies owned by his boss? According to the judgement the reason was either 'blatant corruption in a scheme to defraud SNPC/Cotrade for the benefit of Mr Gokana' or because this arrangement 'was sanctioned at the highest level':

The provisions of Article 11 of the SNPC byelaws prevent any member of the Board having an interest in any contract with SNPC or any company in which it is interested, despite Mr Gokana's protestations that this is not what the Article meant [...]. The conclusion to be reached is that either there was blatant corruption in a scheme to defraud SNPC/Cotrade for the benefit of Mr Gokana (an activity which is not uncommon in some African countries) or this was an arrangement which SNPC and Cotrade sanctioned at the highest level because of the perceived advantages to those companies in disposing of oil in a manner which was intended to distance SNPC/Congo from the money paid by a market purchaser (para. 154; see also paras 62-64)

It is further stated in the London November 05 judgement that it emerged 'in cross examination of Mr Gokana that Mr Elenga, SNPC's legal adviser and a former director of SNPC UK, was joint [Director General] of AOGC with Mr Christel' (para.59).

However, the central question – the riddle of the Sphinx - remains unanswered. Where has all the oil money that accrued at the end of this chain actually ended up?

The judgement finds that the sale of state oil through shell companies was intended primarily to defraud ROC's creditors (paras 198-201). The judgement states that AOGC's bank account at the BGF Bank in Brazzaville, 'over which Mr Gokana had exclusive and complete control' was 'used as a façade or mask to conceal the identity of the seller and true recipient of the proceeds of sale' (para 200, iii) and that it was used 'to channel and feed money to Cotrade/ SNPC' (para. 157).

Yet the judgement also reached the conclusion, during the court proceedings, that 'AOGC had and has no intention of making proper disclosure of its documents' (para. 12). It further states that 'AOGC's bank statements have never been disclosed' (para 89) and that 'the assets of AOGC, and particularly its cash assets, remained shrouded in mystery' (para. 77). Finally, the judgement notes that: 'the "profit" or "commission" element which may have accrued to Sphinx Bermuda or AOGC was not therefore true profit or commission as the result of true negotiated sales between SNPC/Cotrade and AOGC, but the evidence does not establish whether or not it represents Mr Gokana's personal "cut"' (para. 212).

Global Witness believes that this clearly shows an intentional lack of transparency on the part of AOGC, and that there is, in fact, no certainty about the final destination of all the money that ended up with AOGC. Given the lack of disclosure over AOGC's accounts, in our view only further investigation can determine whether, or how much, money passing through these companies was transferred back to SNPC, let alone whether these monies ultimately reached the Congolese Treasury. The governance concerns raised by the use of offshore shell companies by senior government officials to move assets from public to private hands are so serious that the Congolese government and the international community must take immediate steps to undertake such an investigation.

Recommendations for the Congolese government:

- Hold a full public enquiry and independent audit into Congo's offshore oil trading operations, specifically to determine whether funds from sales passing through the bank accounts of AOGC, Sphynx Bermuda and Sphynx UK have been remitted to the Congolese Treasury;
- Address the serious concerns raised by the incomplete and contradictory nature of its oil data, by publishing in full SNPC's accounts and by providing an independent auditor, such as KPMG, access to full information, including all bank account statements, required to produce true and fair reports and to reconcile properly the discrepancies between the SNPC's income and the amount it transfers to the Treasury;
- Report the identity of buyers and prices of specific shipments from SNPC, as were provided to KPMG until 2003;
- Ensure that politically-exposed figures within the oil industry, such as Denis Gokana, provide full details of their private business interests in both oil trading and oil exploration to ensure there is no conflict between these private interests and their role as senior government officials. According to the November 2005 Kensington Judgement, Gokana has broken SNPC's own byelaws (para 154) and has sought to mislead a court of law (paras. 17 & 18). It is Global Witness' view that Denis Gokana should therefore step down as head of SNPC, to avoid damaging the credibility of the Republic of Congo any further.

Recommendations for the IMF, World Bank and bilateral donors:

- Ask the Congolese government to employ an independent auditor to investigate the serious governance concerns raised by the conflict of interest in the use of shell companies to market the country's oil, and the provision of high-interest loans to SNPC by these companies. In particular, the IMF should ask for documentary proof that any monies channelled to AOGC were subsequently transferred to the Congolese treasury. Until this investigation is satisfactorily completed, ROC should not be granted debt relief under HIPC;
- Make genuine reform of the SNPC the main condition on which the international community provides assistance to ROC under HIPC, for instance by the adoption of a time-bound and monitored plan for implementing the recommendations of the SNPC audit. There is also an urgent need for a stricter certification system and other measures designed to ensure genuine transparency in the revenue collection and budgetary system.

- The French government has a particularly important role to play in promoting transparency in the oil sector in ROC, because of its historical relationship with the country, and the fact that it still ROC's largest bilateral creditor.²¹ France is also the originator of the 2003 G8 declaration on 'Fighting Corruption and Improving Transparency' which highlighted specifically the urgent need for revenue transparency in the extractive sector. France should ensure its commitments to improving extractive sector transparency are put into practice both in its bilateral policy towards ROC, and through the use of its voice and vote within the multilateral institutions.²²
- The UK's Serious Fraud Office should investigate the role of Sphynx UK as an apparent front company doing no legitimate business in the UK.
- Examine further the role of the international oil traders which bought Congolese oil from Gokana vessels with apparent indifference regarding potential conflict of interests.

If the international donors fail to act in this case, they risk selling Congo's citizen's short and wasting their own taxpayers' money by providing debt relief and further finance to a government that is not instituting genuine fiscal transparency reform. In so doing, they only entrench corruption, unaccountable government and instability in ROC with potential repercussions across the strategically important region of West Africa.

²¹ ROC owes France \$2.716 billion (end-2003 stock) of which \$1.881 billion was in arrears, about one third of the total. However, given that about one third of the total is in fact commercial debt, France's share in the official bilateral and multilateral debt, is about one half. See IMF *HIPC Enhanced Heavily Indebted Poor Countries (HIPC) Initiative - Preliminary Document*, November 02, 2005, table 3, p. 28, <http://www.imf.org/external/pubs/ft/scr/2005/cr05391.pdf>

²² See http://www.g8.fr/evian/english/navigation/news/news_update/fighting_corruption_and_improving_transparency_-_a_g8_declaration.html

The Republic of Congo and its Oil

In the late 1990s, ROC emerged from a bloody civil conflict largely fuelled by a struggle to control the country's oil wealth, which saw the return to power of military strongman Denis Sassou Nguesso in 1997 after a brief period of democracy. The country is the fourth largest oil producer in Sub-Saharan Africa, producing some 240,000 barrels of crude oil daily, a little over 5% of Sub-Saharan Africa's total.²³ Government revenue from the oil sector totalled US\$1 billion in 2004, and is projected to grow to US\$1.2 billion in 2005 – providing a little over 70% of total government revenue and an income of US\$380 per Congolese citizen.²⁴

Despite this mineral wealth, ROC remains one of the poorest and most indebted countries in the world. The UN's Human Development Index ranks it 142nd out of 177 countries surveyed, a few places behind Bangladesh and Sudan.²⁵ National debt reached US\$8.35 billion at the end of 2003 and 70% of the population lives under the poverty line.²⁶

In April 1998, the Société Nationale des Pétroles du Congo (SNPC) was created as a separate but wholly state-owned entity to administer the government's oil interests. Bruno Itoua was the first CEO of SNPC, replaced by Denis Gokana in January 2005. As an independent entity, it was created to market oil on behalf of the state and to represent Congo's interests with the private operators more effectively than the previous state oil company had done.²⁷ However, as this report and previous Global Witness reports have shown, the lack of transparency and accountability at SNPC appears to have led not to improved management of the country's oil but to concerns that public wealth is being transferred through private hands to an unknown destination.

Faced with growing domestic pressure to better manage the country's oil wealth and keen for international debt relief, in 2002 the Congolese government agreed to implement fiscal transparency reforms under the guidance of the IMF and World Bank. At the heart of the current reform programme are measures to bring greater transparency to the hitherto opaque management of Congo's oil revenues, to ensure that oil wealth is fully mobilized for growth and poverty reduction. One of the key measures was the mandating of KPMG to audit the national oil company (SNPC's) accounts and to provide more information regarding SNPC's role as fiscal agent for the government, including its marketing of oil and its financial transactions.

²³ BP Statistical Review, 2005 www.bp.com

²⁴ *Republic of Congo: Review of Performance Under the Staff-Monitored Program and Request for a Three-Year Arrangement Under the Poverty Reduction and Growth Facility—Staff Report*, January 2005, January 10.

²⁵ United Nations Human Development Report, 7 September 2005 at <http://hdr.undp.org/>

²⁶ *Republic of Congo: Review of Performance Under the Staff-Monitored Program and Request for a Three-Year Arrangement Under the Poverty Reduction and Growth Facility—Staff Report*, January 2005 & IMF, *Republic of Congo: First Review Under the Poverty Reduction and Growth Facility, and Requests for Waiver of Performance Criteria and Modification of Performance Criterion - Staff Report; Staff Statement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for the Republic of Congo*, August 25, 2005, p. 15.

²⁷ SNPC website includes a history of the company at www.snpc-group.com. See also November 05 Kensington judgement, paras. 44-49 and Global Witness, *Time for Transparency*, March 2004, Chapter on ROC 'Société Nationale des Pétroles du Congo', which quotes from an interview with Bruno Itoua in *Géopolitique Africaine*. 8 May 2003, 'Le pétrole, une chance pour le Congo'.

The SNPC and mismanagement of Congo's oil wealth

Since 2003, SNPC has published a large amount of data describing its management of the country's oil wealth. This includes publication of three independent audits of SNPC (partial for 2001 & 2002); quarterly certifications of oil revenues by an independent auditor, including data on SNPC's marketing of oil on behalf of Congo; annual summaries of financial transactions undertaken by the SNPC on behalf of the government; tables of financial operations produced by the Ministry of Finance (Tables des opérations financières de l'Etat or TOFE); and most recently a 'reconciliation' of the huge discrepancies between the revenue transferred to the Treasury from SNPC according to KPMG's certifications of oil revenue and that received according to the TOFE.²⁸

However, whilst a wealth of data has been published, it is demonstrably inaccurate, incomplete and riddled with discrepancies. KPMG described the 2002 accounts of SNPC as 'uncertifiable', citing 'major weaknesses in internal controls' and the risk of 'fraud'.²⁹ The audit also stated that SNPC was performing extremely poorly as a fiscal agent for the government, citing 'exceptionally large differences' in the sales prices obtained from different traders and frequent recourse to oil-collateralized borrowing, the costs of which are extremely high and where there is inadequate information about terms of interest, commissions and other expenses.³⁰

These problems did not improve in 2003, the first year for which the audit of SNPC was published in its entirety. KPMG cites lack of access to account information (including foreign exchange accounts), and continued poor performance by SNPC in its marketing of oil and contracting of oil-collateralized debt (see below). In summary, the auditors found 'significant risks of errors and fraud related to weak internal controls and current governance' in the 2003 accounts. The auditors conclude that the 2003 parent company and consolidated financial statements are 'not certifiable (as in 2002), not even auditable (sic)'.³¹

The numbers that raise more questions than they answer

Global Witness believes that analysis of the published oil data raises the following key questions:

- Why is there a shortfall in the amount the State should have received according to KPMG and the amount transferred by SNPC according to the Treasury?
- Why is there an apparent shortfall in the amount received by SNPC for the sale of oil, relative to the oil that was actually sold?
- Why are there such very high rates of interest and associated costs for the short term loans contracted by the SNPC?
- Why do certain buyers of oil appear to benefit from significantly more attractive sales terms than others?

Earlier this year, the **Publish What You Pay** campaign highlighted its concerns to the IMF, in particular the apparent US\$300 million shortfall in oil revenue received by the Treasury

²⁸ See http://www.mefb-cg.org/petrole/gouv_transp.htm

²⁹ KPMG's report, posted at <http://www.mefb-cg.org/petrole> discusses these inadequacies, specifically, see pages 1, 4 and 7

³⁰ From the same KPMG report, discussing the differences between traders (Chapter 5, p. 12) and the high level of expenses (Chapter 5, p. 10)

³¹ http://www.mefb-cg.org/petrole/revue_etat_finsnpc.htm.

compared to the sum SNPC earned and ought to have transferred according to KPMG's audits.³² In short, around one third of Congo's 2004 oil income appeared to be unaccounted for in the budget. After these discrepancies were presented to the IMF by a US creditor of ROC,³³ auditor KPMG was tasked with 'reconciling' them. However, it was not given access to the primary bank account information that would have made the reconciliation effective, but only to specially prepared statements by the Congolese Ministry of Finance.³⁴ As such, as KPMG itself stated, they could not vouch for the veracity of these statements.³⁵ Global Witness therefore feels that the value of this exercise as an auditing tool to shed light on the discrepancies is severely limited.

Beyond the question of whether funds earned by SNPC are transferred in their entirety to the Treasury, analysis provided to the IMF by the US creditor of ROC highlighted that approximately \$140 million in proceeds from short term loans was not even captured by KPMG's certifications in 2003 and 2004.³³ The creditor alleged that these unreported transactions may be related to the complex system of oil-backed loans undertaken by SNPC on behalf of the state: a subsequent IMF report issued in August 2005 acknowledges that part of the revenue from loans reported by SNPC is in fact unaccounted for in the budget.³⁶

Furthermore, when data published by the Ministry of Finance is compared to loan data analyzed by KPMG in its certifications, the short-term advances from traders on sales seem to carry an annualized cost of 40% in 2004 and a staggering 170% annualized cost in 2003, with an average loan term for both years of approximately 27 days. What is the commercial justification for SNPC's willingness to borrow for very short periods at very high interest rates?

Moreover, such borrowing is contracted directly by SNPC and it is not clear to what extent it is monitored by the Congolese government debt office (CCA). According to a November 2005 IMF report, the CCA does not have the capacity to track debt effectively. It has only one computer capable of producing debt statistics. The report further notes that 'differences in accounting methods and irregular updates of interest and exchange rates can lead to errors in the estimates of outstanding stock of debt' and that 'the CCA's debt statistics are not comprehensive'.³⁷

Again, this raises the question of how accurate a picture the international community has of ROC's debt obligations. As previously stated, ROC's current oil-backed debt is estimated at US\$184 million, but this does not include SNPC's debt. In its preliminary HIPC paper, the IMF states that 'the SNPC has large financial obligations to international oil companies, of some US\$1 billion at end 2003' due to its borrowing from the companies to finance its

³² 'Has the IMF dropped the ball on transparency reforms in the Republic of Congo?' and 'Republic of Congo Transparency Scorecard', 15 August 2005 available at http://www.globalwitness.org/press_releases/display2.php?id=303 ;

³³ FG Hemisphere, holder of Congolese debt presented these findings to the IMF in June 2005.

³⁴ http://www.mefb-cg.org/petrole/certification_concordance.htm.

³⁵ 'Nous ne nous prononçons pas sur cet état émanant de la Direction du Trésor. Cet état est un document interne au Ministère des Finances, à la différence d'un relevé bancaire http://www.mefb-cg.org/petrole/certification_concordance.htm.', 2004, Note 2.

³⁶ *Republic of Congo: First Review Under the Poverty Reduction and Growth Facility, and Requests for Waiver of Performance Criteria and Modification of Performance Criterion - Staff Report; Staff Statement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for the Republic of Congo*, 25 August 2005, p. 69.

³⁷ *IMF HIPC Enhanced Heavily Indebted Poor Countries (HIPC) Initiative - Preliminary Document*, November 02, 2005, pp. 38-40, Appendix I 'National Oil Company Financial Obligations'.

participation in joint ventures.³⁸ Furthermore, auditors KPMG have raised concerns about the lack of reconciliation between SNPC's figures and the companies' own figures, and it is not clear from the IMF report exactly how much other debt remains to be regularized.³⁹

The published data reveals little change to the systemic mismanagement and secrecy that has dogged Congo's oil management to date, yet ROC was given a clean bill of health by the IMF in August 2005 and is moving forward to accessing full debt relief. The IMF cited 'a welcome improvement in governance', including 'steps to enhance transparency with regard to oil sector transactions'.⁴⁰

Global Witness believes that our research, together with information from court cases brought by ROC's creditors, reveal that SNPC appears to be resisting efforts to make its activities more transparent and attempting to avoid increased scrutiny by routing transactions through shell companies. In the case of the three Gokana-controlled companies, the UK High Court has found that: 'This was a deliberate scheme to create an appearance of contracts and independent oil trades and traders which was devised to enable SNPC and Cotrade to sell their assets (oil) against payment from international market buyers, without their assets (neither the oil nor the proceeds) becoming available to meet existing liabilities'.⁴¹

Global Witness further believes that, given the lack of disclosure about AOGC's finances, it is not possible to state categorically that none of the money unaccounted for in the published data could by this means have been diverted to the companies owned personally by Gokana, the man charged with managing the country's oil wealth.

Sales to Sphynx

Names of buyers of individual shipments are given in the audits of SNPC's 2002 and 2003 accounts – a level of detail that has not been provided in subsequent years.⁴² Analysis shows that one company in particular secured particularly attractive prices from SNPC compared to other buyers during 2003. That company - spelt Sphynx in the KPMG report - is not a major player in international oil trading.

The November 2005 Kensington judgement says that 'KPMG's audit of the Congo's oil sales record the 2003 sales reportedly made through AOGC as direct sales to Sphynx Bermuda, whilst invoices for at least two transactions were sent directly from SNPC to Sphynx Bermuda, thus ignoring the presence of AOGC in the chain' (para 138). The table below highlights the prices Sphynx paid compared to those agreed between SNPC and other traders. Particularly in the case of a blend of Congolese oil called Nkossa, the discounts to the price of Brent crude oil (which serves as a benchmark) were materially larger than those offered to other traders. During 2003, Sphynx paid on average 9.6% below the official Congolese tax price (resulting in lost revenue of around US\$15 million compared with sales at market price).

³⁸ See also IMF *HIPC Enhanced Heavily Indebted Poor Countries (HIPC) Initiative - Preliminary Document*, November 02, 2005, pp. 38-40, Appendix I 'National Oil Company Financial Obligations'.

³⁹ IMF *HIPC Enhanced Heavily Indebted Poor Countries (HIPC) Initiative - Preliminary Document*, November 02, 2005, p. 41, Appendix II, 'Debt Management Capacity'.

⁴⁰ IMF Executive Board Completes First Review Under the Republic of Congo's PRGF Arrangement and Approves US \$11.41 Million Disbursement, IMF Press Release 05/181, August 3 2005.

⁴¹ See Approved Judgement of The Honourable Mr Justice Cooke in the case of Kensington International Limited vs. Republic of Congo, Royal Court of Justice, London, 28 November 2005, para. 199.

SNPC oil sales in 2003, separated by buyer⁴³

Blend of crude oil	Date	Buyer	Brent price US\$/barrel	Prix fiscal US\$/barrel	Selling price US\$/barrel	Discount to Brent price %	Discount to Prix Fiscal %
Djeno	16-Jan-03	Sphynx	31.94	29.66	29.07	-9%	-2%
	12-Feb-03	Vitol	32.79	31.06	28.74	-12%	-7%
	07-Mar-03	Quantic	34.37	28.06	29.95	-13%	7%
	27-Mar-03	Sphynx	26.88	28.06	23.07	-14%	-18%
	01-May-03	Sphynx	23.48	23.72	20.80	-11%	-12%
	07-Jun-03	Quantic	28.15	25.66	24.88	-12%	-3%
	04-Jul-03	Vitol	28.02	26.52	25.90	-8%	-2%
	10-Aug-03	Vitol	30.12	28.00	27.76	-8%	-1%
	09-Sep-03	Quantic	27.47	25.25	24.89	-9%	-1%
	08-Oct-03	Elidovo	29.99	28.07	26.56	-11%	-5%
	27-Oct-03	Vitol	29.10	28.07	26.74	-8%	-5%
	06-Dec-03	Quantic	29.56	28.35	26.52	-10%	-6%
	20-Dec-03	Vitol	30.37	28.35	27.70	-9%	-2%
Sphynx average discount						-12%	-11%
Other traders average discount						-10%	-3%
Overall average discount						-10%	-5%
Nkossa	25-Jan-03	Glencore	31.17	31.33	31.17	0%	-1%
	27-Jan-03	Glencore	31.09	31.33	31.30	1%	0%
	10-Mar-03	Genoil	34.43	26.87	33.86	-2%	26%
	14-May-03	Vitol	26.19	26.44	25.63	-2%	-3%
	31-Jul-03	Sphynx	29.00	27.92	25.57	-12%	-8%
	24-Oct-03	Sphynx	29.29	29.56	25.54	-13%	-14%
	14-Dec-03	Sphynx	30.12	29.93	28.85	-4%	-4%
Sphynx average discount						-10%	-9%
Other traders average discount						-1%	6%
Overall average discount						-5%	0%

Sphynx also gave Congo short term advances on all six cargos. Global Witness has calculated that the interest rates of loans made by Sphynx cost Congo almost US\$5 million and carried an annualized cost of 81%.

On the evidence of the KPMG reports, in 2003 alone some \$20 million was lost through sales to Sphynx rather than to traders who would have paid fair market prices. At the time of these transactions, his CV on the SNPC website shows that Sphynx was managed by Denis Gokana, who held the title of Special Advisor to the President and who became President and CEO of the SNPC in January 2005.⁴⁴ Global Witness has seen a Bill of Lading relating to a May 2004 shipment of oil by SNPC to Sphynx UK. Comparison with the quarterly certifications of oil sales shows that shipment to have been sold at a material discount to the official price, or 'Prix Fiscal', demonstrating that below-market value transactions with Sphynx continued into 2004.

Furthermore, the Bill of Lading, which certifies that the cargo described has been shipped, first cites Sphynx UK as the consignee of the oil. However, it later describes French bank BNP Paribas as the consignee and the same contact name, Simon Chaffey, is listed as the contact for both Sphynx UK and BNP Paribas. Chaffey is described in the November 2005 Kensington judgement as having first worked for SNPC UK, SNPC's London trading arm (see para 32) and then for Sphynx UK (see para 37). It is not known whether BNP were aware that they are described as a consignee in this bill of lading.

⁴³ Basic shipment data from the KPMG certifications posted at <http://www.mefb-cg.org/petrole> and Brent crude oil prices from Reuters.

⁴⁴ See Gokana's CV, posted on the SNPC website at www.snpc-group.com

According to its articles of incorporation listed in Companies House,⁴⁵ Sphynx UK Ltd is a UK-registered company, formed in 2002. Its beneficial owner as listed in its 2004 Annual Return is Litchfield Development, a Bermudan company. Sphynx UK's annual returns indicate no signs of meaningful business activity. Its annual filing at Companies House indicates that Sphynx UK reported no revenues and costs of £83,480 in the year to January 2004. The financial picture in the preceding year was similar, although costs were higher at £108,627. Because of this, the company has no liability for UK taxation.

Before the November 2005 Kensington judgement, this is far as analysis of previously available public documents would have allowed. That companies belonging to a key figure in the Congolese oil industry with high-level political connections should have earned so much from sales from the state oil company is deeply disturbing. Subsequent evidence from the judgement and other documents reveals that that Gokana continued to orchestrate such deals, and indeed increased them, after becoming President of SNPC.

Denis Gokana's business interests⁴⁶

According to the November 2005 judgement, following a career with former French state oil company Elf, now privatised and merged with the TOTAL group (para. 27), Denis Gokana turned his attentions to Congo's national oil industry in 1998 to 'to review the commercial agreements between the Congo and oil companies' (para. 28). The four man team in which he worked recommended the creation of a holding company in the Congo, with specialised subsidiaries (para. 30). The three other members of that team were Dr Ike Nwobodo, Serge Ndeko and Bruno Itoua (para 29), all of whom were later had prominent positions in the Congolese oil industry. Nwobodo and Ndeko also played a role in Gokana's private companies (see below). The judgement also notes that Gokana has been 'the President's Special Adviser on oil from December 2002 to date' (para. 38), a politically important position offering access to the highest echelons of government.

The team's review was followed by the formation of SNPC: 'SNPC was to have a commercial branch which was to operate in London with Mr Gokana at the helm....who had then no experience of oil trading at all' (para. 31). Contracts were prepared based on a model employed by Elf (para 33). 'Pre-financing arrangements were utilised, the broad effect of which was that purchasers lent money to SNPC either directly or through a financing company before any delivery of cargo purchased. The price of the cargo was then set off against the loan by way of repayment together with interest charged at a significant rate' (para. 33).

However, Gokana's role with SNPC UK was to end in April 2001. 'In his statement, Mr Gokana said he left SNPC in April 2001 because he had a personal problem with Mr Itoua [at the time head of SNPC, now Minister for Energy] whom he found tyrannical and totalitarian' (para. 34).

The Sphynx/AOGC Group

After leaving SNPC, Gokana began to build an international network of related companies:

⁴⁵ <http://www.companies-house.gov.uk/>

⁴⁶ The judgement in the November 28 2005 Kensington vs. ROC case provides a detailed overview of Gokana's background, companies and activities, from which the following quotes are drawn, for particular references see paragraph numbers in brackets. See also Gokana's CV posted on SNPC's website www.snpc-group.com

In his statement [Gokana] stated that the idea was to have a small group of oil companies with a central company based in the Congo. One of the companies based offshore would be involved in oil trading and in consequence Sphynx Bermuda and Sphynx UK were incorporated on 15 February 2002 and 7 February 2002 respectively. (para. 37)

Another company, Africa Oil and Gas Corporation (AOGC) was created in January 2003 (para 39). '[Gokana] wanted to build it up as a company to trade with suppliers of oil, oil products and gas and in due course to become an exploration and production company, active in the Gulf of Guinea and in places like Congo, Zaire, Angola and Gabon' (para. 68)

The judgement notes that, Gokana is 'on his evidence, the 90% shareholder of AOGC and the owner of the Sphynx companies' (para. 12) and that this arrangement has been in place since the companies were created (para. 91). However, Gokana's ownership was indirect and Gokana was not named as a director of either Sphynx company (paras. 90 & 94), because, on his own admittance, 'he did not want his connection to be known' (para. 88; see also para. 113). Thus discovering a link between Gokana and those companies beyond his involvement in their day-to-day management, as stated on his CV on the SNPC website, was essentially impossible from public records (para. 94). In fact, it took the intervention of a court order to demonstrate his ownership.

Sphynx UK according to the November 2005 Kensington judgement, has 'earned no revenues since its establishment but plainly exists for no other purpose than to act as a contact/service company for Sphynx Bermuda' (para. 98). However, 'Sphynx UK never made any charges to Sphynx Bermuda for its services and its accounts showed loans from Mr Gokana and Sphynx Bermuda' (para. 96).

The directors of Sphynx UK are recorded in its annual return for 2004 as Alberic Hounounou and Jean Massie. Hounounou appears to be a French academic who has worked with Université Paris IX Dauphine and Ecole Centrale Paris, two institutions in Paris.⁴⁷ Jean Aymon Massie worked for Elf in Congo and then went on to found an association of employer shareholders of the company (AVAS) in 1986. He is an expert on corporate governance, currently heading AFAGE (Association Francaise de Gouvernement d'Entreprise; <http://www.afge-asso.org/>).⁴⁸

It is unclear whether, or to what extent, Mr Massie and Mr Hounounou knew of Sphynx's function: Hounounou's signature appears on Sphynx UK's annual financial statements, lodged with the UK's Companies House in 2003 and 2004. Global Witness has written to both Directors asking them to clarify their involvement with the company. To date we have received no reply from Mr Hounounou, but in a telephone conversation, Mr Massie stated the following:

I was really surprised when I heard about the judgement [Kensington vs. ROC 28 Nov 05]. I knew nothing about it. I have known Denis Gokana for a long time, over twenty years; I met his family, which is highly respected, while I was working in Congo (1976-77). I have watched his children grow up. At the end of 2002 he told me 'I have created a structure, I need the name of an administrator'. He told me it was to be a service company that would also do research in the oil sector. I told him that I did not want to be administrator of a commercial company because I

⁴⁷ For instance, Alberic Hounounou is described on the Dauphine website as working in that institution's sociology department. See also http://www.editions-breal.com/includes/fiche_auteur_main.asp?auteur_id=1128

⁴⁸ Massie is cited as a speaker at the 'Global Conference on Corporate Governance', New Haven, Connecticut, July 2000 and other seminars and conferences of similar themes.

did not want any conflict of interest with my previous career – I had worked for 34 years in the [Elf] Group. I accepted because of our friendship, in all good faith. I did not believe that this company carried out any transactions. I was never shown any documents, I never signed any documents, I did not sign any financial statements, the 2002, 2003 and 2004 accounts, and I was not kept informed of how the company was managed. [Sphynx UK] seemed to me to be dormant; [Gokana] told me it was doing very little and that it was in deficit. There was no turnover and only the running costs (the salary of Simon Chaffey, the costs of the accountant Jordan, and the rent). I believe that there have never been any commercial transactions by Sphynx UK. I hope that Denis Gokana can explain himself and show that he believed he was acting in the interests of his country.⁴⁹

Sphynx Bermuda employed two directors from a local Bermudan corporate services business who according to the judgement had no knowledge about the company's activities (para. 81). According to the November 2005 Kensington judgement, AOGC is now managed by a Mr Malonga (para. 75), though he had no effective control over the company's activities since '[Gokana] alone was responsible for purchases and sales of oil' (para 74). The judgment also states that 'it emerged in cross examination of Mr Gokana that Mr Elenga, SNPC's legal adviser and a former director of SNPC UK, was joint DG of AOGC with Mr Christel' (para 59).

The company was reorganised in 23 February 2005 and a board of Directors (Conseil d'Administration) was put in place consisting of three persons (para 69). These are Mr Bantsimba, a cousin of Gokana's and Mr Ndeko with whom he had worked at Elf and Mr Okoumou, 'another old friend from Elf' who also worked for SNPC (para 69). Ndeko is currently working as Director General for the Ministry of Hydrocarbons in the Congo (para. 69). It is Global Witness' view that, as the number two official in the Oil Ministry, Mr Ndeko's role as Director of AOGC, a private company buying oil from the state oil company, would seem to conflict with his public duties.

Mr Nwobodo, a trader with extensive experience who formerly worked for the Nigerian National Petroleum Company (para. 31), was a Director of SNPC UK (p. 56) and then a consultant to the company 'until its liquidation in mid 2004' (para. 84). He also traded oil on behalf of SNPC UK (para. 115) and later Cotrade (para. 129), AOGC and Sphynx Bermuda (para. 141).

Despite not being named as an officer of either company, Gokana's sole control over their bank accounts (para. 171), and over the trading activities of Sphynx Bermuda and AOGC (paras.125 & 146), put those companies entirely under his control: 'both AOGC and Sphynx Bermuda were, like Cotrade, under the control of Mr Gokana' (para. 198).

Global Witness finds it hard to understand how a small company run by Denis Gokana, a politically-connected individual with just a few years trading experience, managed to secure sales terms so much more attractive than larger more established oil traders.

Gokana : a conflict of interest?

Finally, Gokana was appointed President of SNPC in January 2005 (para. 212 and CV on SNPC website), putting him in control of managing the State's oil resources. According to

⁴⁹ Telephone conversation with Mr Massie, 9 December 2005.

the November 2005 Kensington judgement, Gokana also agreed that he has effective control over Cotrade (para. 65), the SNPC subsidiary charged with marketing SNPC's oil (para. 61, ii) that is headed by the son of the Congolese President (para. 115). The judgement notes that 'Mr Gokana did not deny that if he wanted Cotrade to do something and told it what to do, it would do it' (para. 65). In that position, Gokana has continued to trade oil on behalf of his private companies; 'all the oil trading activities, in which AOGC's name was used, were effected by Mr Gokana, without any reference to anyone else at AOGC' (para. 74).

The judgement describes the sale of oil from Cotrade to AOGC and the obvious conflict of interest created by Gokana's control of both buyer and seller (para. 154). It is significant that, in addition, the judgement notes that the byelaws of SNPC forbid board members from dealing with it in a private capacity. 'The provisions of Article 11 of the SNPC byelaws prevent any member of the Board having an interest in any contract with SNPC or any company in which it is interested' (ibid).

The Vitol Trade

The Kensington case does not look in detail at the commercial terms of AOGC's transactions, but an earlier affidavit with supporting documents filed by David Fransen, Managing Director of Vitol, a large trading company, in the context of the RICO complaint in New York describes the terms of one sale under which Vitol bought oil from AOGC.⁵⁰

Fransen's statement and the supporting documents state that Ike Nwobodo, on behalf of Sphynx Bermuda, arranged to sell 950,000 barrels of Congolese Nkossa crude oil to Vitol (Fransen affidavit, p. 8). This cargo, shipped on or about 27-28 June 2005 is referred to as the 'Nikator' cargo (Introduction to Fransen statement & supporting documents). According to Fransen's statement, Vitol had previously bought cargoes from Sphynx Bermuda (p. 1). after the initial contract was agreed, however, Nwobodo informed Vitol that the seller of the oil would no longer be Sphynx Bermuda but Africa Oil and Gas Corporation (AOGC), to which Vitol agreed (p.6 of Fransen statement). According to the Kensington November 2005 judgement, the reason for changing the seller's name was as a result of pressure on Sphynx Bermuda from creditors to Congo, and Gokana in any case treated the two companies interchangeably: 'in evidence, Mr Gokana said that the change of seller was because the Sphynx [Bermuda] accounts had been frozen by a court order' (para. 143)

According to the affidavit, Vitol agreed to pay 95% of the expected value of the shipment – US\$50.5 million – five days before the oil was delivered to Vitol via its account at JP Morgan Chase in London to an AOGC account with BGF Bank Gabon, on behalf of its Brazzaville branch (p.9 of Fransen statement and supporting documents). It charged AOGC a relatively modest interest rate of LIBOR plus 3% for early receipt of the cash (p.20 of affidavit and supporting documents).

In Global Witness' view, the price paid to AOGC, a 50¢ per barrel discount to the then-market price of Brent crude oil, appears a reasonable price for the oil, both on the basis of our understanding of market conditions and given the 20¢ per barrel higher price at which Vitol sold the oil to its final buyer, Sun International Ltd, an affiliate of US company Sunoco Inc. (p. 4 of affidavit and supporting documents).

⁵⁰ Sworn Statement of David Fransen, May 27 2005 RICO complaint filed by Kensington International Ltd against SNPC, BNP Paribas and Bruno Itoua, former head of SNPC in the United States District Court Southern District of New York (05 CV 5101).

Whilst SNPC no longer publishes details of sales to specific buyers, shipments are still described by date, size and price in its quarterly certifications. A cargo corresponding to the above trade is recorded as being sold in June 2005 for US\$52.311 per barrel.⁵¹ Assuming that the two shipments, of identical size and on the same date, are one and the same, Global Witness calculates that the gross profit made by AOGC on this cargo would be US\$3.7 million, before deducting the maritime taxes and the financing costs charged by Vitol for the advance made (US\$0.1 million and US\$0.3 million respectively). When these are deducted, it appears AOGC would have made a net profit of US\$3.3 million on this single cargo.

The November 2005 Kensington judgement states that all 2005 sales were executed by Ike Nwobodo on behalf of Sphynx Bermuda or AOGC: ‘When it emerged in Dr Nwobodo’s evidence that he, SNPC’s consultant, had sold all the 2005 oil cargoes in the name of Sphynx Bermuda or AOGC, and had drawn up the contracts himself, it became obvious that AOGC and Sphynx Bermuda were being used by Mr Gokana as a façade’ (para. 145). Given that Ike Nwobodo, working for AOGC in this instance, was also contracted as a consultant to SNPC, Global Witness finds it difficult to understand why SNPC should not have been able to secure this higher price by itself, using its marketing arm, Cotrade.

In addition, the judgement noted that Sphynx Bermuda has bought at least 31 shipments of Congolese oil since January 2003, buying from AOGC, which in turn acquired the oil from SNPC (para. 122). Prior to the Vitol sale described, ‘AOGC was the immediate purchaser which passed the cargo on to Sphynx Bermuda, which then sold the oil in the market’ (para. 41). In every transaction bar one, funds were deposited directly into AOGC’s account: ‘the proceeds of only one cargo (the Addax cargo) were received by [Sphynx Bermuda]. In every other case the money was remitted, it seems, by Sphynx Bermuda’s purchaser to AOGC in the Congo, although AOGC’s bank statements have never been disclosed’ (para. 89).

‘Show me the money’

The November 2005 Kensington judgement notes that Sphynx Bermuda sold US\$472 million worth of Congolese oil in the 27 months between January 2003 and April 2005 (para. 89). Global Witness believes the sum lost by SNPC in the under-pricing of sales to AOGC is unclear. The judgement refers to the existence of discrepancies between prices reported by SNPC for sales, according to the certifications, and prices in the sales contracts: ‘Where contract documents have been disclosed of any kind, anomalies in the prices set out appear, as compared with those reported by KPMG, the auditors appointed by the World Bank to report on oil receipts of the Congo’ (para. 126).

However, Global Witness has calculated that, if the US\$3 million or 6% lost in revenues to SNPC by the AOGC trade with Vitol described above was a typical percentage, roughly \$30 million could have been lost overall by SNPC in relation to the oil sold by Sphynx Bermuda, in addition to that lost through oil sold by Sphynx UK and AOGC itself. Global Witness’ previous estimate of US\$20 million lost through sales to Sphynx UK according to analysis of the KPMG reports appears to give a reasonable order of magnitude of missing money from under-priced oil sales.

⁵¹ KPMG Q2 2005 Certification, Tables IV and VI;
<http://www.mefb-cg.org/petrole/dpf/Rapport%20Congo%20Attest%202%20E8me%20T.%202005.PDF>

But where did this money end up? As has been described, the November 2005 Kensington judgement notes that no information relating to the AOGC bank account with BGFI Bank Gabon (para. 89) nor other documents such as tax records (para. 77) were produced. In reference to AOGC's company accounts for 2003 and 2004, the judgement further notes that these were 'internal documents only and were not audited (contrary to Mr Malonga's statement) and contained a number of anomalies which remain unanswered in relation to its assets' (para. 75).

The judgement finds that AOGC and the Sphynx companies were simply front companies whose primary purpose was to disguise profits returning to SNPC so as to prevent creditors seizing oil shipments (paras 194, 195 & 199). However, there is no evidence of whether the entire sum of profits made it back to SNPC and then on to the Congolese Treasury in the judgement. Indeed, while discounting the notion that the Gokana companies were vehicles for personal enrichment, the judgement does state that corruption might have been another reason for selling oil and making loans through this structure but states that this was not the primary argument advanced by Kensington:

Mr Gokana orchestrated the chain of transactions between Sphynx Bermuda and SNPC. He had control over all the entities concerned and directed what should take place, including the creation of contractual documents and invoices which were intended to present the appearance of commercial transactions between independently operated companies. This was a fiction. It is plain that this was done for the benefit of the Congo since there is no other reason which could explain it. Wholesale corruption on the part of Mr Gokana was not put forward as an explanation and whilst Kensington suggested that there was some siphoning of monies from the Congo through the use of this structure, it is plain in my judgment that the structure was designed and operated to conceal the fact that it was the Congo, through SNPC/Cotrade, which was selling the oil in the international market and receiving the proceeds for it (para. 146)

However, Global Witness believes there are two important pieces of evidence that means that it cannot be discounted that monies going to AOGC could have been siphoned off for personal enrichment.

First, if the intention is simply to distance SNPC and the State from the oil it sells by selling it first to a private company, why would it be necessary to sell that oil to such companies at heavily discounted prices? Indeed, to do so would simply complicate the return of the funds to the SNPC, which is now audited and would need to account for the source of this money to its auditors. As previously stated, the judgement notes the anomalies in price between the few sales contracts produced during the case and the figures appearing in KPMG's certifications (para 126). Indeed, it is our view that selling the oil to the front company at a market price would be an easier and more effective way to avoid creditor interference, whilst ensuring that SNPC got full value for the oil.

Second, according to press reports, AOGC has been awarded a 10% interest in Marine Block XI, an offshore oil concession in the Republic of Congo. There is no public information about the terms on which AOGC will participate in the block, which is to be operated by consortium led by the UK-based trading company SOCO International. Soco has a 75% interest in the block and SNPC the remaining 15%.⁵² If the aim of creating a convoluted

⁵² 25 August 2005 press release from Soco International, which is operator with a 75% interest, with SNPC holding 5%. <http://www.socointernational.co.uk/press.php?id=78&d=2005>; 'CONGO – B Jackpot pour Soco sur Marine XI?', Lettre du Continent, N° 47, 21/07/2005.

series of shell companies is simply to avoid seizure of oil by creditors, it is unclear why AOGC would be awarded an interest in an oil concession.

SOCO will in fact own only 85% of its 75% share through its subsidiary SOCO Exploration and Production Congo (SOCO EPC). There is no public information about the beneficial owners of the other 15% of SOCO EPC.⁵³ In addition, Soco's press release states that 'The Group is in discussions with various parties to farm-out a portion of its interests in Marine XI': according to press reports, this portion could be transferred to Vitol and the Swedish Lundin group.⁵⁴

The Chairman of SOCO International is Patrick Maugein and one of its Directors is Rui de Sousa. According to SOCO's 2004 annual report, de Sousa is a director of Quantic Limited (Quantic) and both men each have a 25% shareholding in the company,⁵⁵ which is also listed in KPMG's analysis of sales as buying under market price cargoes from the SNPC.⁵⁶

According to press reports, in awarding Marine XI to SOCO, SNPC broke a previous deal agreed with the Canadian registered company Energem. Energem had paid a US\$5 million fee for the concession and, according to newspaper reports, offered Congo a US\$40 million signature bonus, whereas SOCO has agreed a payment of only US\$25 million.⁵⁷ It is not clear whether any of this money has been received by the Congolese Treasury: if it has, the sum received should be made public.

Global Witness further understands that Energem has written to the IMF to put the IMF on notice about losing its agreement to operate Marine XI and that it has launched a court action in Congo alleging breach of contract.⁵⁸ That SNPC, rather than the Ministry of Hydrocarbons, should have handled the awarding of the concession is in our experience itself unusual in such allocation processes. That SNPC, headed by Denis Gokana, and part-owner of the block, should have negotiated a transaction in which AOGC, owned by Denis Gokana, is awarded part of the block, would seem not only to contradict SNPC byelaws but to smack of the most flagrant conflict of interest.

Global Witness believes that whether this is indeed the case will not be clear until a full and transparent investigation into AOGC and its finances is undertaken, including examination of bank account information. We have written to Denis Gokana, asking for clarification of his role in all three companies, but to date has received no response. We have also attempted to contact him directly, via telephone on several occasions. He has so far declined to speak with us to explain his role and shed light on the unanswered questions.

What is clear, however, is that Gokana appears to have both disregarded the byelaws of the company of which he is President (para. 154). Furthermore, as the Honourable Mr Justice Cooke notes, during the court proceedings: 'I did not find Mr Gokana or Mr Malonga [AOGC's administrator] to be satisfactory witnesses. Their statements contained falsehoods,

⁵³ 'CONGO – B Jackpot pour Soco sur Marine XI?', Lettre du Continent, N° 47, 21/07/2005.

⁵⁴ 'Qui seront les partenaires de SOCO sur le permis Marine XI au Congo?', Lettre du Continent, N. 480, 20/10/05,

⁵⁵ See <http://www.socointernational.co.uk/downloads/reports/ara2004.pdf>, pp. 22 & 27; See also SOCO International release, 'Directors' Interests', 20 June 2005;

<http://today.reuters.com/stocks/QuoteCompanyNewsArticle.aspx?view=PR&symbol=SIA.L&storyID=160385+20-Jun-2005+RNS>

⁵⁶ KPMG's « Rapport SNPC 2003 - Annexe 4. Mandat de gestion » describes the sale of four cargoes of Djeno oil to Quantic and one to Elidovo. Average prices were below Prix Fiscal prices for both.

⁵⁷ 'Energem contre SOCO/Vitol', La Lettre du Continent, No. 477 08/09/05 and Global Witness interview.

⁵⁸ Global Witness interviews June and December 2005.

only some of which were admitted (by Mr Malonga). The lack of documentation produced by the third parties inhibited the testing of some of their evidence, but reflected upon its credibility' (para. 17)

The role of the traders

The November 2005 Kensington judgement notes that Glencore, one of the traders who bought oil from the Gokana companies, had cooperated with the court and specifies that 'it was not being said that Glencore was privy to a conspiracy to defraud creditors of the Congo' (para. 9).

Honourable Mr Justice Cooke then proceeds to comment: 'In the small world of oil trading, I do not consider that Glencore's personnel [...] who knew of Mr Gokana's and Dr Nwobodo's SNPC connections, could not have appreciated that Sphynx Bermuda was somehow linked to the Congo. Glencore had never dealt previously with Sphynx Bermuda but dealt here with Dr Nwobodo without any investigation of his authority or Sphynx Bermuda's substance' (para. 65). Glencore was also 'prepared to adopt the practices suggested to [Glencore] for payment by [Gokana and Nwobodo]' (para. 200, i). The Glencore employee who arranged the deal confirms that 'the company was of no real importance to me - what mattered was my personal contact with Ike Nwobodo who, over many years, had proved to be a professional and trustworthy contract party' (para. 167).

Another oil trader who bought oil from Gokana vehicles appears to Global Witness to have shown a marked lack of curiosity about any possible conflict of interest between Gokana's position as head of the state oil company and his private business interests. The affidavit of David Fransen states that Vitol knew of AOGC as a 'private company owned and/or managed by Mr Gokana who was also the general manager of SNPC' and because of this connection 'Vitol did not doubt AOGC's ability to perform and to pass valid title of the oil to Vitol'⁵⁹ The affidavit does not mention the company performing any further due diligence.

It is the view of Global Witness that it is unlikely that the SNPC would have been able to avoid the scrutiny of donors and the IMF so easily without the apparent indifference of the oil traders to the blatant conflict of interest represented by a top government oil official's ownership of the companies they were buying from.

Conclusion

Congo's oil wealth has for too long been managed for the private profit of the elite rather than for the benefit of its entire population. The government's tardy and lacklustre efforts to improve transparency in the oil sector has meant an increase in the quantity, if not the quality, of information about the national oil company's handling of the country's oil revenues put into the public domain. However, the discrepancies apparent in this data have raised yet more questions. The recent court judgement in London describes how a large portion of unaccounted for monies were transferred from SNPC through via a web of intermediate shell structures to a private company controlled by the government's top oil official.

⁵⁹ Sworn Statement of David Fransen, May 27 2005 RICO complaint filed by Kensington International Ltd against SNPC, BNP Paribas and Bruno Itoua, former head of SNPC in the United States District Court Southern District of New York (05 CV 5101), p. 7.

Until the ultimate destination of the earnings from the scheme is clarified, and until the role played by Denis Gokana and other government officials in this scheme is investigated, ROC's government cannot credibly lay claim to be genuinely reforming SNPC's management of the country's oil revenues. Bilateral and multilateral donors must bring sufficient pressure to bear on ROC to ensure that such an investigation takes place and to ensure that the proper transparency mechanisms are in place to prevent such conflicts of interest in the future, by making sure they do not go undetected and unsanctioned, before ROC is granted debt relief. Similarly, the UK authorities must investigate the role of the Gokana vehicles in its jurisdictions.