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OUT OF AFRICA

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

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EXECUTIVE SUMMARY

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

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

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

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

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



Photo: Simon Dawson/Bloomberg via Getty Images

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

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

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

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

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

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

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

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

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

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

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

HOW CONGO LOST \$1.5 BILLION IN SIX SECRETIVE DEALS

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

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

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

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

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

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

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

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

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

HOW THE SECRETIVE DEALS WORKED

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

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

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

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

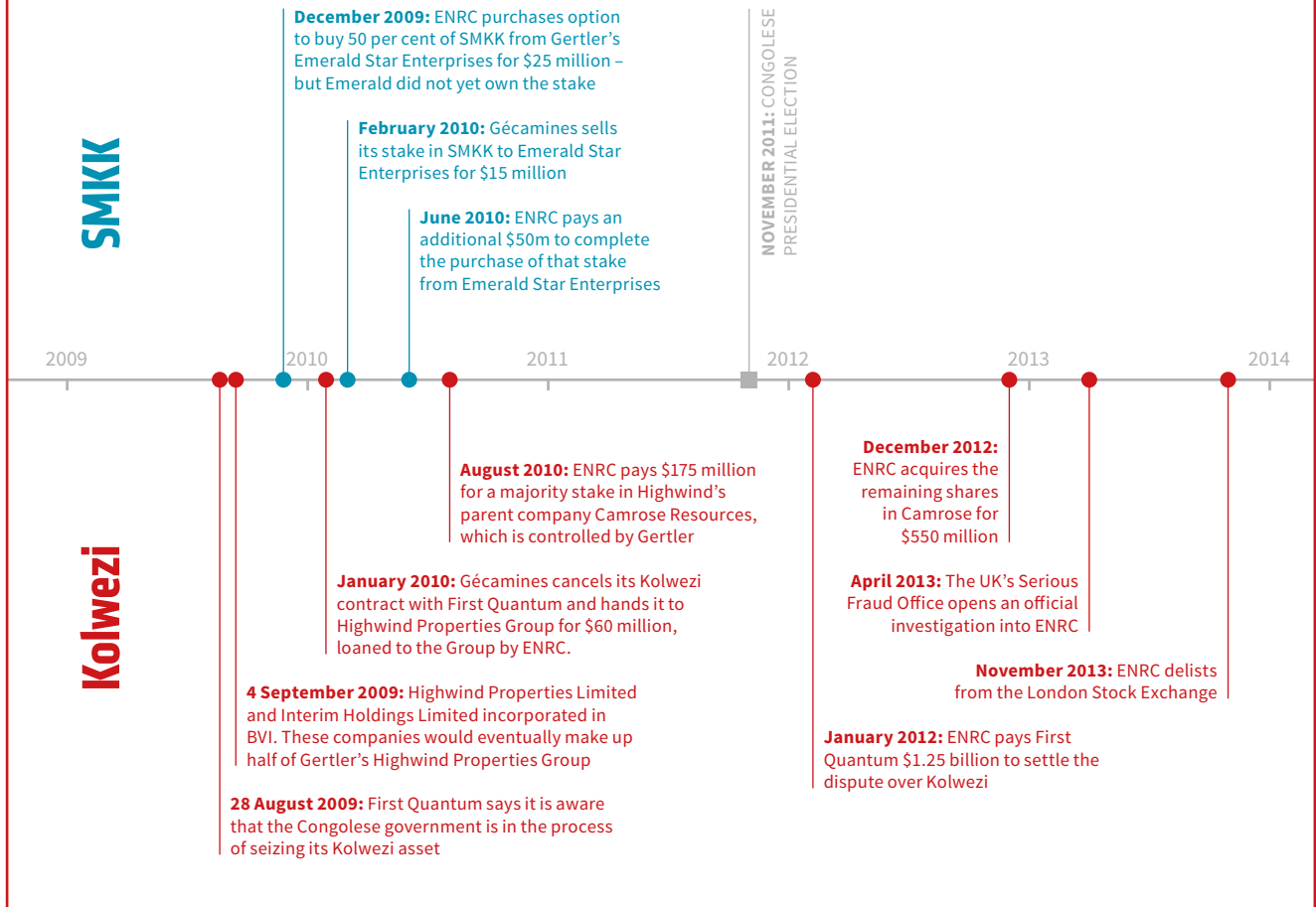
The second of the six deals that clearly demonstrates this murky transfer of assets is the sale of Kolwezi, a mining project in southern Congo that contains rich copper deposits.

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

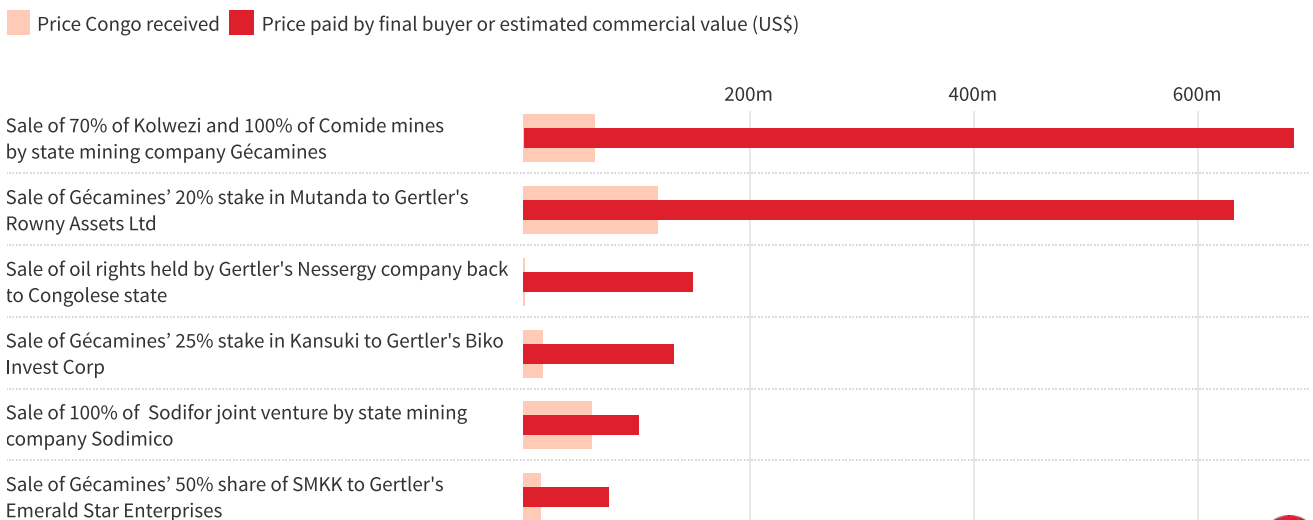
The timing of events leading up to Highwind's acquisition of the Kolwezi contract add weight to the suspicion that Gertler had prior information that First Quantum's licence might become available. Two of his offshore companies involved in the deal, including Highwind Properties Limited, were only created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

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

TIMELINE OF SMKK AND KOLWEZI DEALS



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



GERTLER, KABILA, AND A WIN-WIN FRIENDSHIP

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

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

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

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

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

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

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

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

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

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



Photo: AP Photo/J. Scott Applewhite

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



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

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

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

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

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

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

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



'Out of Africa' cartoon.

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

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

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

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

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

THE FALLOUT: WHAT'S HAPPENED SINCE THE SCANDAL BROKE

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

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

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

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

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



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

Photo: Simon Dawson/Bloomberg via Getty Images

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

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

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

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

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

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

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

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

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

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

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

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



Photo: Jorge Brazil, <http://bit.ly/1pV0RTZ>

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

GERTLER'S PUBLIC RELATIONS CAMPAIGN

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

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

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

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

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

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

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

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

A NEW ERA OF SECRET SALES?

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

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

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

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

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

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

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



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

RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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