

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

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

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

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

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

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



Photo: iStockphoto.com/Brazil12



Photo: GCI/EP

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

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

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

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

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

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

Contract for nearly 400 times the purchase price

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

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

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

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

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

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

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

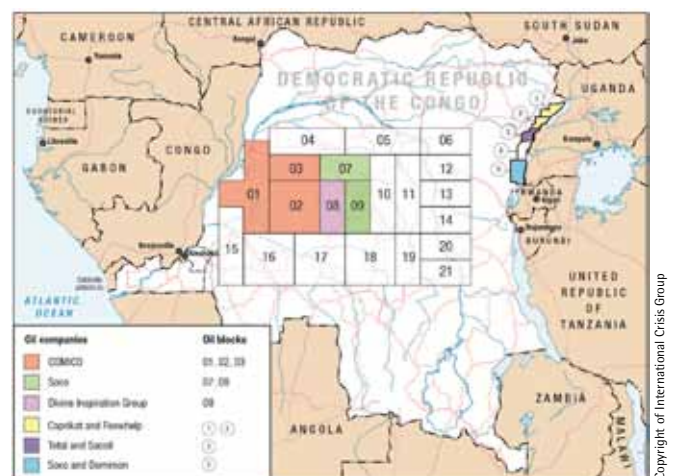
Congolese Oil Minister Atama said in April 2013 that "all requests for the full publication of this accord are both premature and without foundation" as important conditions of the deal had not been concluded. He said that once these conditions are finalised all necessary information will be made available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

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

Flipping

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

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



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

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

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

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

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

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

Nesserger's obscure offshore ownership

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

THE MYSTERIOUS OTHER 25%

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

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

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

Company ownership chart for Nesserger Ltd

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

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

Lelia Investments Ltd - 100% BVI

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

Finsbury Nominees Ltd- 50% Gibraltar

Registered
address: Finsbury
Trust

Finsbury Holdings Ltd - 50% Gibraltar

Registered
address:
Finsbury Trust

SUF Resources Ltd - 25% Gibraltar

Registered
address: Hassans
law firm

Waterway Enterprises Ltd - 50% BVI

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

INDUS Trading Ltd - 25% Gibraltar

Registered
address: Finsbury
Trust

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

Nesserger Ltd - 95%* Gibraltar

Registered
address:
Hassans law firm



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

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



Photo: iStockphoto.com/Brazil2

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

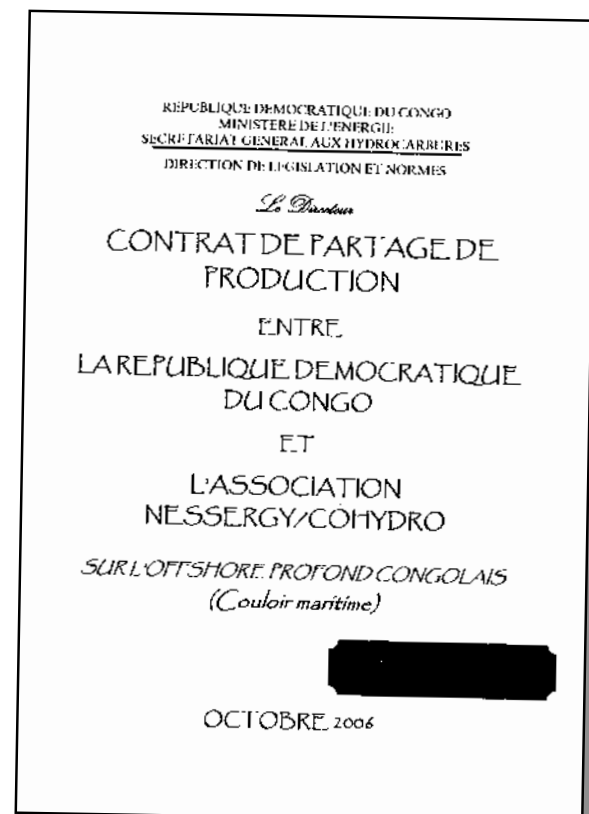
"Nessergy is owned by offshore companies registered in the British Overseas Territories of the British Virgin Islands and Gibraltar."

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

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

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

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



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

H OIL AND THE DEAL THAT DIDN'T HAPPEN

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

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

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

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

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

Changing the rules to end corporate secrecy

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

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

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

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

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

Chronology

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

Notes to editors:

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



Photo: iStockphoto.com

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

Endnotes

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

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

