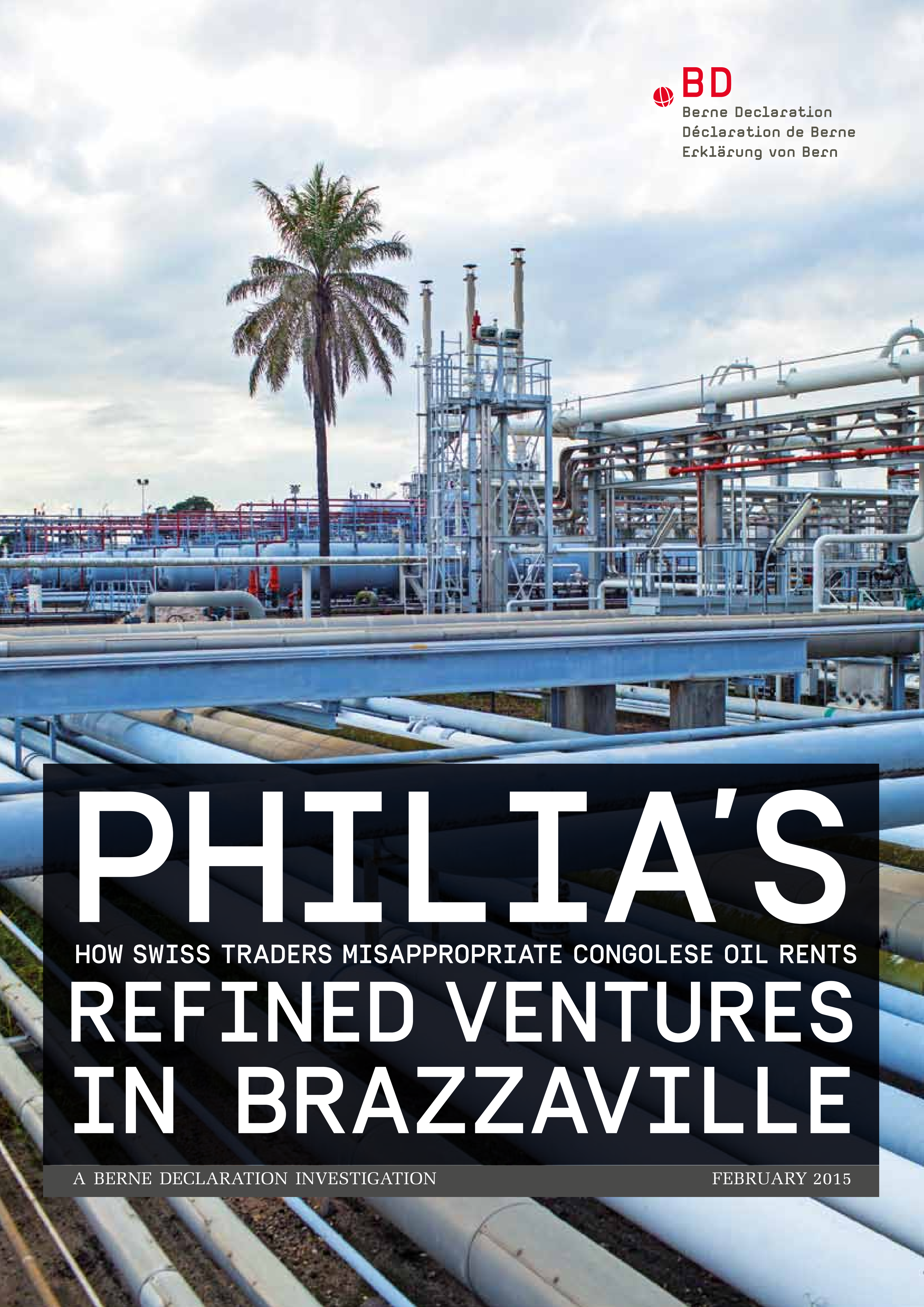

BD
Berne Declaration
Déclaration de Berne
Erklärung von Bern

PHILIA'S REFINED VENTURES IN BRAZZAVILLE

HOW SWISS TRADERS MISAPPROPRIATE CONGOLESE OIL RENTS

A BERNE DECLARATION INVESTIGATION FEBRUARY 2015

02 *PHILIA'S REFINED VENTURES*

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PHILIA'S REFINED VENTURES IN BRAZZAVILLE – HOW SWISS TRADERS MISAPPROPRIATE CONGOLESE OIL RENTS, February 2015 is edited by Berne Declaration, Avenue Charles-Dickens 4, CH-1006 Lausanne, phone +41 (0)21 620 03 03, fax +41 (0)21 620 03 00, info@ladb.ch, www.bernedeclaration.ch, IBAN CH64 0900 0000 1001 0813 5 **AUTHOR** Marc Guéniat with the support of Valentino Arico, Olivier Longchamp, Andreas Missbach, Urs Rybi and Natasha White **EDITOR** Géraldine Viret **TRANSLATION** Natasha White **PUBLISHER** Raphaël de Riedmatten **LAYOUT** Naila Maiorana, www.fatformat.com **COVER** Oil refinery in Pointe-Noire, Congo-Brazzavillle © Antonin Borgeaud
This investigative report is also available in French at www.ladb.ch and the executive summary is available in German at www.evb.ch

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INTRODUCTION

The story begins in the spring of 2014 when we received a mysterious envelope at the Berne Declaration's (BD) Lausanne office. Sender unknown. The envelope contained a "term contract to export fuel oil". Dated 30 May 2013, the contract was between a company called Philia and Coraf, the Republic of the Congo's oil refinery. Coraf is fully owned by the Société nationale des pétroles congolais (SNPC), the Congolese national oil company. The contract's signatory and Coraf's General Administrator is none other than Denis Christel Sassou Nguesso, son of the Congolese President.

Philia was also a name we recognised. We first came across this small company domiciled in Geneva in early 2014 during research on trading companies connected to politically exposed persons (PEPs). At the time, we scratched them from a list destined for publication, as we were unable to quickly establish a direct connection between the company's unique shareholder, Jean-Philippe Amvame Ndong, and any PEP.[1] But this anonymous envelope marked the beginning of an in-depth investigation into the business relations between Philia and Coraf. Our aim was to determine if and how the Geneva-based trading company benefitted from clauses in the contract at the expense of the Congolese state's public finances. Over the course of the following months, our source sent us many other documents including invoices, contracts and lists of bank accounts. Although he decided to reveal his identity to us, he nevertheless requested to remain anonymous in this report – a wish we of course respect.

04 *PHILIA'S REFINED VENTURES*

Sources: anonymous but reliable

The contract between Philia and Coraf is the centrepiece of this investigation. We sent it to multiple experts in the sector to help us decrypt its technical jargon, identify any unusual clauses and understand their implications. We interviewed others to help us get to know Philia, its personnel, activities and history. Finally, additional informants were contacted to familiarise us with the Congolese context. Overall, around twenty sources were interviewed.

Some of our informants requested not to be cited at all; those that did accept did so only on the condition of absolute anonymity, even if they were not directly or indirectly part of Philia's activities. Such are the rules of the game in the secretive world of trading.

Philia attempts to prohibit publication

In addition to the above, we have also been careful to consult the concerned parties – including Philia and Coraf's managers – by sending them specific questions. Between June and December 2014, we met with Philia's managers four times. We also provided them with the opportunity to clarify their position via email and to re-read how we integrated their responses. Despite these efforts, many questions remain unanswered.

Rather than responding directly to certain questions, and in spite of full transparency from our side, Philia preferred to try to prevent publication of this report. Its managers did so by filing judicial proceedings, first in the canton of Geneva where the company is domiciled, then in the canton of Vaud, the location of the Berne Declaration's French-speaking office. These efforts were in vain, however: the court dismissed two appeals. Philia retracted the other two. While Philia was filing its claims, we still awaited answers from Philia's managers to one last set of questions.

Coraf refused to respond to our questions, posed both via email and telephone. One of its representatives, Seraphin Ele, proposed to meet us in Pointe-Noire, Congo. We declined this offer due to time, budget and security issues. We provided a total of three weeks for them to reply to our questions, to no avail.[2]

Philia enriched at Coraf's expense

After in-depth investigation, we can conclude that the contract between Coraf and Philia enriches the Genevan trading company at the state-owned refinery's expense. Congolese public finances and hence the country's population are therefore being penalised. We are unable to quantify precisely by what amount, but believe it to be significant. Indeed, we believe that the sum was substantial enough to enable Philia to grow faster than would have been possible under normal competitive conditions. Thanks to this contract – obtained in the absence of a public tender – Philia was able to acquire the necessary credibility and profits to launch activities in other countries, notably Gabon and Senegal.

To this day, we are nevertheless unable to prove that this contract, detailing unusual conditions, conceals corrupt operations that benefit one or more individuals from Coraf. The documents and testimonies we have drawn upon allow us only to pose a series of important questions. In sum, did Philia act on behalf of politically exposed persons for whom it would have been able – directly or indirectly – to wrongfully divest part of the oil rents, depriving the Congolese state, therefore, of significant financial windfalls?

From Brazzaville to Geneva

In order to understand the ins and outs of this affair that concerns not only Philia, but also other Swiss trading companies to which it resold oil from Coraf, we must plunge into the context of Congo, a country that remains extremely poor, despite its rich natural resource wealth; a country where public and private actors are intricately intertwined and corruption is endemic. Below, we unpack the business model adopted by Philia in 2013. We will then provide a detailed analysis of the clauses of the contract between the Geneva-based trader and Coraf.

I – CONGO :
A COUNTRY EMBLEMATIC OF THE RESOURCE CURSE

The Republic of the Congo is severely gripped by the resource curse. Economic growth, spurred largely by oil revenues, has oscillated between 3.5% and 8% of gross domestic profit (GDP) over the last decade. Yet, the Central African petro-state is ranked 140th out of 187 countries on the Human Development Index[3] and around one in two Congolese continue to live below the poverty line.[4] Meanwhile, a small elite close to President Denis Sassou Nguesso live a life of luxury. In power since 1979 (minus Patrice Lissouba's brief interlude from 1992 to 1997), the big man of Brazzaville sits at the head of one of the most corrupt administrations on the planet.[5]

President Denis Sassou Nguesso and his son, Denis Christel, who is likely to succeed him.
© Jeune Afrique / Vincent Fournier

As we will explore below, not a great deal of concern is given to conflicts of interest in Congo. Businessmen work in government, and civil servants work in business. The oil sector, responsible for around 80% of public revenue, is no exception.[6] Whether we are talking about oil production or trade, a small handful of people appointed by the President are in control of the petroleum contracts. These contracts are drawn-up in the most opaque conditions, appointing partners elected on criteria that are at times highly questionable. Private interests are better served than those of the Congolese people and the corrupt management of the sector explains a large part of the misery that prevails over swathes of the country. In Brazzaville, there is little indication that things will change anytime soon.

1.1 THE INESCAPABLE DAUPHIN

The President's son, Denis Christel Sassou Nguesso, touted as next in line to the presidency, makes common appearances in the media. Today, he holds a key position within the party in power, the Congolese Labour Party (PCT).[7] Since 2010, "Kiki" or "Junior", as he has been nicknamed, has also been Deputy Director-General of the downstream sector[8] at SNPC, as well as Coraf's General Administrator.[9]
Before taking on his position at SNPC, Denis Christel occupied an identical role at Cotrade, SNPC's London-based subsidiary dissolved in 2009 under pressure from the IMF and World Bank, which declared its management opaque and unaccountable.[10] He has also held positions at Glencore, Vitol and Trafigura, where he undoubtedly acquired the competencies for the job, as one laudatory media article underlines.[11]

Indeed, "Junior" did not underperform at the head of Cotrade. Between January 2003 and April 2005, the trading subsidiary sold petrol on behalf of the state to Sphynx Bermuda Ltd. at below market price. At the time, Sphynx Bermuda Ltd. was an offshore company held by the Director-General of SNPC and close friend of Denis Christel, Denis Gokana. Gokana subsequently resold this petrol at market price to international trading companies (including Vitol[12] and Glencore), cashing in the profits via his own company, Africa Oil & Gas Corporation (AOGC).[13] Denis Christel also appears to have pocketed substantial retroactive commissions via his offshore company, Long Beach Ltd. (Anguilla).[14] Renowned for his extravagant expenditures, he is currently subject to a judicial proceeding led by France, known as the "Biens mal acquis" affair.[15]
The situation has barely improved. According to a former oil Minister, "one does not engage in the oil sector in Congo without being associated with the presidential family; it's impossible. The logic is simple: the rare public tenders are an illusion, destined to reassure the international community. But it's all biased; the candidates do not have the same terms of reference".[16] The head of commodity trade finance at a major Geneva-based bank further adds: "we have ceased all activities in crude exports from Congo-Brazzaville because there are no public tenders". Inevitably, every transaction passes by an inescapable trio *(see box 1).*

RÉPUBLIQUE DU CONGO

UNITÉ • TRAVAIL • PROGRÈS

CARTE NATIONALE D'IDENTITÉ

NAME
DENIS CHRISTEL SASSOU NGUESSO

NICKNAMES
Kiki, Junior

DATE OF BIRTH
Unknown

CIVIL STATUS
Married

EDUCATION
Général-Leclerc military preparatory school (Brazzaville); Masters in Private Law (France); professional experience at Vitol, Glencore and Trafigura

EMPLOYMENT
Congolese Labour Party (PCT) candidate for Oyo constituency; member of political office of the PCT; Deputy Director-General, downstream oil sector, SNPC; General Administrator, SNPC

PHILANTHROPY
Founder, Fondation Perspectives d'avenir

INTERESTS
A taste for luxury, a passion for exotic jurisdictions and squandering public assets

KNOWN EXPENDITURES
Watch from Dubail, Paris – €22,160; luxury tiles from Villa Paris - €402,000; shirts with gold and precious stone cufflinks - €257,000; seven cars (Porsche, Maserati, Bentley, etc.); €8 million investment in renovation of Paris apartment and private mansion in Neuilly; transactions of hundreds of thousands of dollars on a credit card connected to a trust in Hong Kong (2005-2006)

PERSONAL MAXIM
"Before being the President's son, I am above all a Congolese citizen" ("Avant d'être le fils du président, je suis un citoyen congolais")

Box 1

The troika of Congolese oil trading

Alongside Denis Christel Sassou Nguesso, two other figures are unavoidable in Congolese oil trading: the above-mentioned Denis Gokana, and Lucien Ebata. Together, the three make up a "troika" that rules the sector.[17]

Denis Gokana, a public and private partner

Despite having no blood connection to the presidential family, Denis Gokana is as inescapable as Denis Christel Sassou Nguesso in Congo's oil sector. Of Mbochi ethnicity – like the President – he was an employee of Elf-Aquitaine during Françafrique's finest era.[18] He also participated in the founding of SNPC in 1998. A prosperous businessman, Gokana's companies (including AOGC) hold multiple shares in oilfields, always in partnership with SNPC where he is Chairman. Incidentally, AOGC, "Congo's only private oil company", was founded in 2003 in the context of the oil sector's liberalisation.[19] In parallel to his role as a manager at SNPC, Gokana also therefore participated in the wave of privatisation that was to prove so fruitful for him. His private interests intensified last April when, according to Africa Intelligence, AOGC purchased permits in four new oilfields from SNPC – information we have been unable to verify.[20] In short, Gokana sits on both sides of the fence.

Lucien Ebata, a "diplomat" and friend of Switzerland

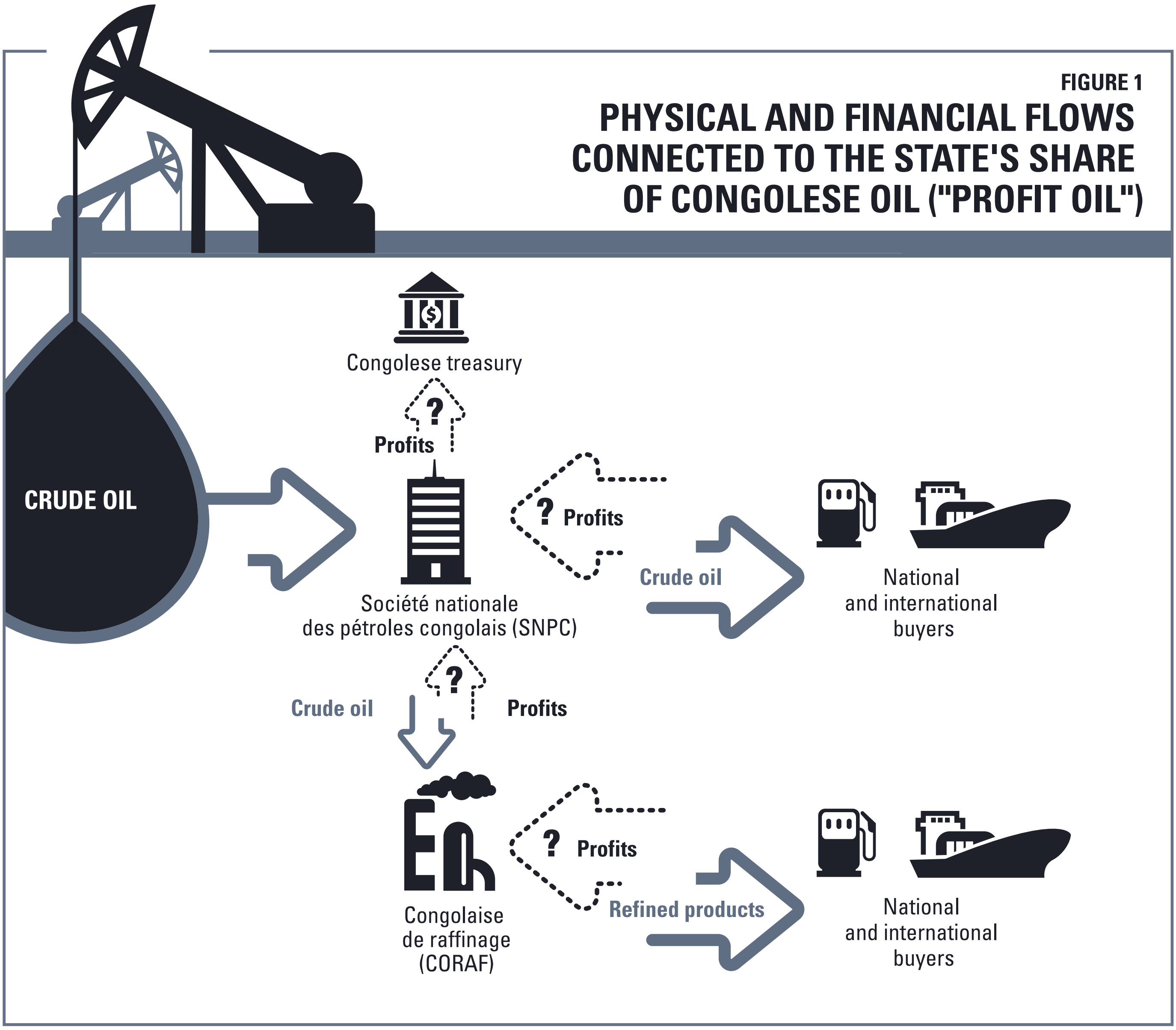
Lucien Ebata is the third member of "Congo-B's trading troika". Ebata is the owner of Orion,[21] a group headed by Philippe Chironi with a trading arm in Switzerland.[22] Since creating *Forbes Afrique*, renamed "Forbes Sassou" by the media, he has played a key role in the President's foreign policy. The annual forum of the American magazine's local branch in Brazzaville provides the occasion – for nothing less than a fortune – to invite influential French politicians, including Nicolas Sarkozy in summer 2014.[23] These informal happenings may well have nothing to do with business. Yet, coincidentally, since the magazine's creation in 2012, Orion has been regularly granted the rights to lift Congolese crude (sold on immediately to Shell), as well as participation in the Mengo-Kundji-Bindi oil block.[24]

Ebata's man in Switzerland is well connected to the Sassou Nguesso family. Operating out of Chavannes-de-Bogis, near Lausanne in Switzerland, Philippe Chironi was identified by Tracfin, the French Minister of Finance's Intelligence Service, as an "intermediary" in a complex network of offshore companies in highly opaque jurisdictions, including the Marshall Islands, the Seychelles, Saint-Marin and Maurice. These offshore companies were built using funds that "may have […] resulted from corrupt practices in Africa (notably in Congo Brazzaville and Congo)" for the benefit of Sassou Nguesso's clan.[25] According to French investigators of the Biens mal acquis affair, it was through the intermediary of Chironi that the presidential family and other Ministers spent staggering amounts in luxury Parisian boutiques. In an interview with *Libération*, a French newspaper, Chironi declared that he was not close to the Sassou Nguesso family, that this was a false allegation based on tenuous assumptions, and that he aimed to clear this up with the French police.[26]

1.2 WHO PROFITS FROM "PROFIT OIL"?

Oil-producing companies must provide the Congolese state with in-kind royalties, known as "profit oil". Since 2010, the entirety of this "profit oil", whether crude or refined products, has fallen into the hands of Denis Christel Sassou Nguesso. *Figure 1* below shows the physical and financial flows connected to "profit oil":

FIGURE 1
PHYSICAL AND FINANCIAL FLOWS CONNECTED TO THE STATE'S SHARE OF CONGOLESE OIL ("PROFIT OIL")



Since 2013, it has been possible to grasp the precise scale of the profit oil honeypot because Congo, a certified "compliant member" of the Extractive Industries Transparency Initiative (EITI), has decided to implement a non-mandatory provision disclosing SNPC's oil sales-derived revenues.[27] Using the EITI's quarterly reports, it is possible to calculate that these sales amounted to over $5 billion in 2013,[28] confirming previous years' estimates.[29] During 2011 and 2012, for example, SNPC sold between 120,000 and 150,000 barrels per day – more than half of the total Congolese oil production.[30] The value of this oil is equivalent to 88% and 100% of state revenue, respectively. Such figures underline the significance of Denis Christel's current position. The identity of the buyers is, however, not revealed. Nonetheless, just as in so many other contexts modestly labelled as "risky", Swiss traders are omnipresent in Congo *(see box 2).*

In 2013, of the around 150,000 barrels per day that SNPC traded, 12.2% passed through Coraf,[31] the Congolese refinery tasked with transforming crude oil into refined products (butane gas, gasoline, fuel oil, gas oil etc.). Coraf's website reveals nothing about the destination of these products. According to American sources, some, notably gasoline and gasoil, are directed for domestic consumption;[32] the rest, comprising largely fuel oil and naphtha,[33] is exported.[34]

Coraf is generous … with itself

Although, technically, Coraf should generate a significant windfall through these sales, on paper it is in fact a financial abyss for the Congolese state. EITI reports reveal that between 2011 and 2013 Coraf did not repay the public treasury for the oil it processed. In 2011, the national refinery received 4.5 million barrels, none of which gave rise to a payment to the state. This has led EITI to state, therefore, that this could be "considered as SNPC's debt vis-à-vis the state".[35] No such payment was recorded for the following year either, implicitly implying that this "debt" has not been honoured.[36] EITI auditors further underlined how 6 million barrels – worth $600 million – "assigned" to Coraf were "not accounted for" in the table titled "State's financial transactions, 2012".[37] In the 2013 quarterly reports, the financial charts account for the value of the deliveries of crude to Coraf (over $600 million),[38] but the rows "Coraf's receipts" remain blank; again, Coraf appears to receive crude but pays nothing to the state. Using the aforementioned data, we have calculated that outstanding payments exist for over 12% of Congo's "profit oil". Yet, Coraf appears to be in no rush to pay back what it owes. What has happened to these profits? The total opacity surrounding Coraf's operations makes it impossible to verify where these barrels of crude were accounted for. The national refinery's representatives chose not to reply to our questions, by email or telephone.

Box 2

Swiss companies delight in Congo

The fact that Congo's oil sector is highly corrupt does not deter Swiss traders, who have access to a large part of the market, both in crude exports and distribution of refined products via their large network of service stations. In addition to Orion, all the big names in trading are present in Brazzaville: Vitol, Glencore, Mercuria, Lynx and Trafigura. According to the best available estimates, Swiss traders acquired between 27% and 36% of all crude sold by the SNPC from 2011 to 2013, for over $400 million.[39] However, some, such as Gunvor, got stung in the process.

Gunvor: an all too common story

Since January 2012, Geneva-based Gunvor has been at the heart of an investigation opened in Switzerland against X on suspicion of money laundering relating to a contract concluded with SNPC.[40] Congolese intermediaries directly benefitted from the retroactive commissions generated by the $4 per barrel "discount" granted to Gunvor for 920,000 tonnes of crude worth an estimated $2 billion. While the so-called discount constitutes a major loss for Congolese public funds, it is a nice $72 million bonus for the intermediaries that facilitated the contract's conclusion. They did so via a labyrinth of offshore companies in the British Virgin Islands, Marshall Islands and Belize, created to conceal the beneficial owners behind the transactions.
Despite the fact that the investigation is still ongoing, Gunvor remains present in Congo through its share in PA

A Puma service station. Swiss traders dominate the distribution market in Congo-Brazzaville. © *Antonin Borgeaud*

Resources, a company that has two oil fields in partnership with SNPC, Murphy and Soco International.[41]

Puma's Congolese claw

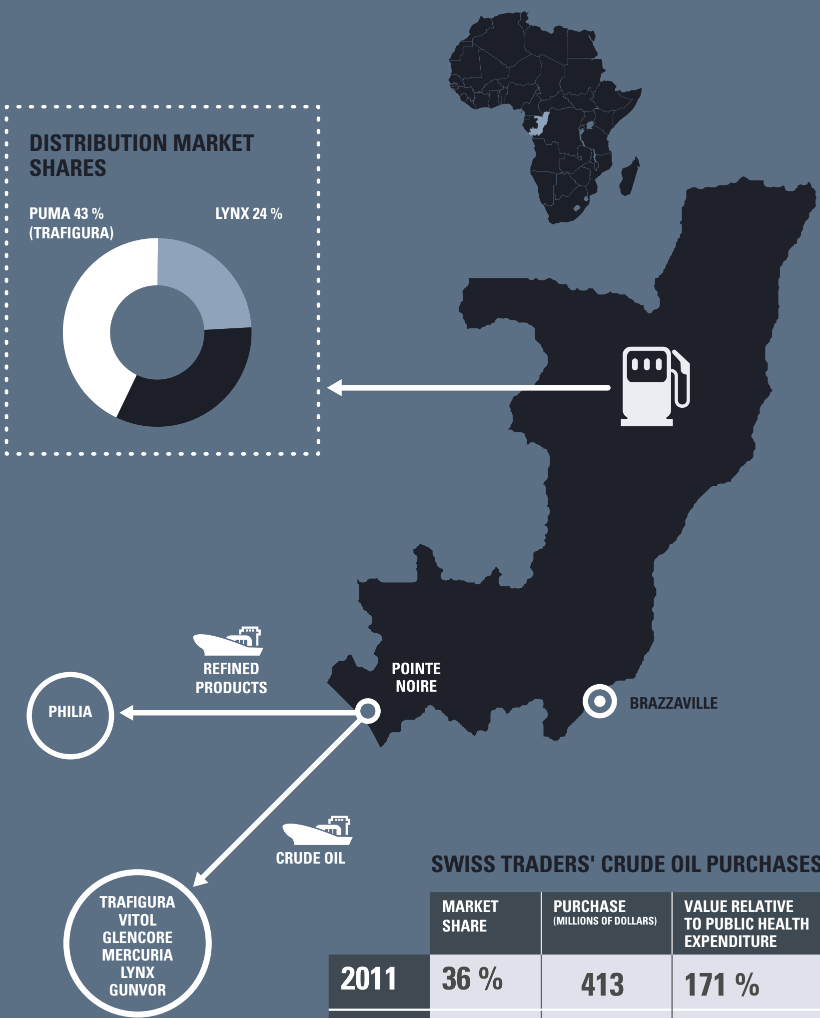
In addition to its purchases of Congolese crude, Trafigura has also installed itself in Congo for the long haul via its subsidiary Puma Energy. The distribution company has a network of 35 petrol stations throughout Congo, giving it 43% of the domestic market. It further benefits from a tax exemption enabling it to clear a "maximum margin".[42] Puma has been active in Congo, its first permanent African venture, since 2002.[43] Puma International Congo SA's local banking connections feature BGFI *(see box 4)*.[44] It also holds a 12.5% share in an oil products storage facility company, the Société Commune de Logistique.[45]

In the eye of the Lynx

Lynx Energy is another Swiss trading company favoured in Brazzaville, a city it describes as "strategic".[46] Created by a string of ex-Mercuria traders, Lynx installed itself alongside Puma as a key distribution actor in 2011 through its purchase of X-Oil. It bought Congolese crude in 2012 and 2013. "At the end of July 2012, X-Oil advanced to third place in Congo across all segments, with a downstream market share of 24%", boasts Lynx,[47] without mentioning the fact that it wasn't in fact in possession of X-Oil at the time.

Figure 2

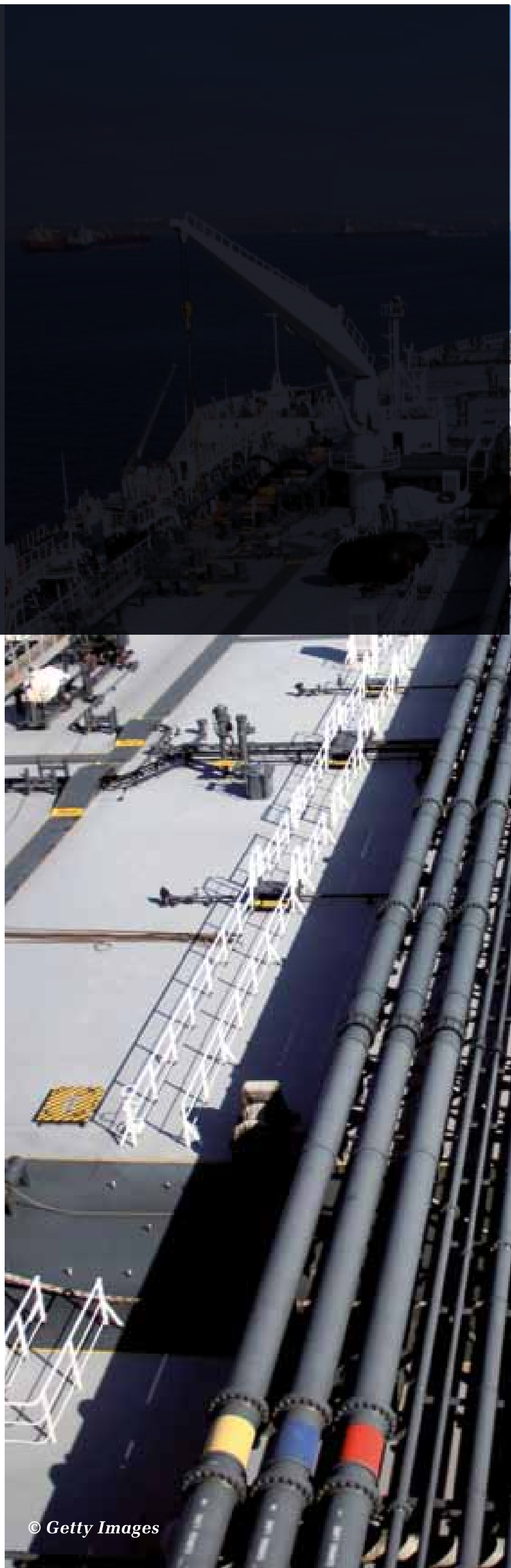
SWISS TRADERS DELIGHT IN CONGO



SWISS TRADERS' CRUDE OIL PURCHASES

	MARKET SHARE	PURCHASE (MILLIONS OF DOLLARS)	VALUE RELATIVE TO PUBLIC HEALTH EXPENDITURE
2011	36 %	413	171 %
2012	27 %	411	128 %
2013	33 %	499	unknown

II–PHILIA'S CONGOLESE PRIVILEGES



© Getty Images

It was against this highly "risky" backdrop, where a number of Swiss traders are already present, that a new Swiss company made its first appearance in 2013 in Congo's downstream oil sector: Philia SA. Registered on Geneva's prestigious Grand-Rue, Philia SA has one sole manager – a Nigerian banker called Ikenna Okoli. Another company with the same name but no legal connection to Philia SA exists in Singapore – Philia Trading Pte Ltd. "Each company can operate under the name of the other", Mr Okoli explains.[48] We therefore refer simply to "Philia" throughout the remainder of the text, except where specification is judged necessary. According to our research, the majority of Philia's employees – about fifteen people, notably its directors – are based in Geneva.

The sole shareholder of these two companies is Jean-Philippe Amvame Ndong, a Gabonese national and teacher by training. In its two years of existence, the "group" has positioned itself to trade petroleum products in Congo, Gabon and Senegal. "We are a young company that has experienced rapid growth", gushes Mr Amvame Ndong.[49] Philia's first "deal" – one that was to pave the way for the multiple deals that followed by proving to the industry that it was capable of honouring a contract – took place in Brazzaville with Coraf.

2.1 AMVAME NDONG: A SHAREHOLDER CLOSE TO JUNIOR?

This "deal" could perhaps be explained by Mr Amvame Ndong's alleged close friendship with Coraf's General Administrator, Denis Christel Sassou Nguesso. A number of sources interviewed made reference to their close friendship. They purportedly regularly spent time together in the south of France where Mr Amvame Ndong lived for a number years. Certain witnesses further revealed how Philia's personnel were engaged in providing private services of all sorts to the Congolese President's son, including recruiting future staff for the foundation he intended to create. Incidentally, at least one other of Mr Amvame Ndong's business partners is close to Denis Christel Sassou Nguesso *(see box 3).*

However, their alleged friendship is not enough to explain Philia's success in Congo. Mr Amvame Ndong avowed that he "never recruited nor contacted anyone for Mr Denis Christel Sassou Nguesso's alleged foundation",[50] though he continued, "I know people, everyone who works in Congo's downstream oil sector. There are discussions, it's normal".[51] He affirmed, however, that he was not, or is not, involved in any political activity.

Mr Amvame Ndong further took the opportunity – as is his right – to judge our questions as "partial, devoid of public interest and on behalf of competitors with the aim of ejecting Philia from the market".[52] Our view, on the other hand, is that the contract between Coraf and Philia assumes public interest by the simple fact that Coraf is a public entity. Oil revenues constitute the primary source of income for the Congolese state and, therefore, an important potential means to raise the living standards of the Congolese people.

Yet, as we have seen, the management of Congo's downstream oil sector is problematic in many aspects. While we uphold the presumption of innocence, notably in the "Biens mal acquis" case, Coraf's General Administrator Denis Christel Sassou Nguesso is nonetheless embedded in a matrix of facts that raise serious doubts about his integrity.

Although we only possess anecdotal evidence on his relationship with Mr Amvame Ndong, the facts we have been able to obtain on Philia's activities in Congo are highly questionable. Among the most troubling of these are the clauses in the contract between Philia and Coraf, which we received anonymously by post in April 2014.

Box 3

A skillful teacher

We know very little about Philia's sole shareholder, Jean-Philippe Amvame Ndong. He is 46 years old,[53] a Gabonese national and legally domiciled in Libreville, Gabon.[54] Before embarking on a career in trading oil and timber around ten years ago, he was a teacher.[55] Our sources further confirm that today Mr Amvame Ndong has an apartment in Monaco, but lives in hotels in Nice, Paris and Geneva. Indeed, one evening in November 2014, a staff member of the BD found herself by complete coincidence in the company of Philia's manager, Mr Okoli, outside Geneva's prestigious Mandarin Oriental Hotel. When Mr Amvame Ndong was requested inside at reception, the hotel staff dialled his private line without hesitation, indicating that he is indeed a familiar client.

Philia's business activities did not originate in Geneva but in Mougins in the south of France, under the name of "Philia Consulting". It was not until October 2012 that the company arrived on the shores of Lake Geneva offering consulting services for acquisitions and investment in the oil sector, both upstream and downstream. One source declares to have never truly understood what Philia Consulting offered, particularly as the company did not appear to earn any money. Mr Amvame Ndong clarifies that "Philia Consulting did engage in real and concrete activities, though as a company, it never really achieved a turnover". It was nonetheless allegedly through Philia Consulting that Mr Amvame Ndong gathered his experience in oil exploration and production – a point that we return to below.

A partnership in Bermuda

According to one of our sources, Mr. Okoli's working relationship with Philia Consulting began when he was Head of Investments at Faisal Private Bank (Switzerland) SA. United today at Philia, the Okoli-Amvame Ndong duo divide their roles: "Mr Okoli benefits from extensive experience in banking and highly refined competencies in the oil trading sector. He follows the operations behind each transaction. Mr Okoli and Mr Amvame together supervise all the administrative aspects of Philia Trading Pte Ltd., as well as diverse operational issues relating to Philia SA […] getting personally involved in ensuring that each transaction runs smoothly. His sharp competencies in exploration and production ensure that he can directly coordinate every aspect of Philia's business in this area".[56]

Before launching its independent trading activities, Philia first formed part of a joint venture with the Nigerian company, Oando.[57] The partnership, formed in March 2012, evolved in Bermuda under the name of Petronoir Ltd. Oando's boss, Jubril Adewale Timubu, is a renowned "friend" of Denis Christel Sassou Nguesso.[58] According to our sources, Petronoir undertook the same activities as Philia today – lifting fuel oil and naphtha from Coraf. Philia's managers remain vague, but confirm that the contract with Coraf was justified by its experience acquired through Petronoir.

A Benin bank and Junior's "facilitator"

Besides trading, Mr Amvame Ndong was active in the banking sector in Benin. When the Banque Africaine pour l'Industrie et Commerce (BAIC) was formed in the summer of 2013, Jean-Philippe Amvame Ndong comprised one of the three members on its Board of Directors.[59] A few months later, the Board was expanded to include Atlantic International SA, a Geneva-based trading company, and Philia Trading Pte Ltd., represented by Ikenna Emmanuel Okoli.[60]

Through the intermediary of BAIC, Mr Amvame Ndong entertains direct business relations with a man whose close proximity to Denis Christel Sassou Nguesso is confirmed – Yaya Moussa. A Board Member since the bank's creation, today, Moussa is its President. When Denis Christel Sassou Nguesso arrived in Washington in September 2011 to promote his foundation, "Perspectives d'avenir", it was the same Yaya Moussa who "facilitated" his visit.[61] In 2005, Mr Moussa, a Cameroonian national, was sent to Brazzaville with the IMF to negotiate Congo's structural reform policies as, at the time, the country found itself on the list of Heavily Indebted Poor Countries (HIPCs).[62] It is highly likely that he met Denis Christel during this period, as it was the IMF that demanded the dissolution of the controversial Cotrade.[63]

It's a small world.

2.2 A CONTRACT TO EXPORT FUEL OIL

Philia's first "deal" in Congo was the acquisition of a term contract to export fuel oil with Coraf. Signed in person by Denis Christel Sassou Nguesso, the contract, renewable for one year "after evaluation in January 2014", granted the Singapore-based entity the totality of the fuel oil destined for export from 1st June to 31st December 2013.

According to the documents in our possession, in 2013 Coraf transferred five cargoes of fuel oil to Philia; one just before their contract entered into force. By re-selling this fuel oil, Philia achieved a turnover of $140 million, to which we can add four cargoes of naphtha, amounting to $35 million.[64] The total value of these cargoes is equivalent to the value of a quarter of all the oil Coraf received from SNPC in 2013.[65]

In the summer of 2013, Philia simultaneously obtained the rights to lift fuel oil in Gabon from the Société Gabonaise de Raffinage (Sogara).[66] Philia's turnover from this deal amounted to over $73 million, raising the cumulative total to around $250 million. According to our calculations, these various transactions bring Philia's gross profit to around $2.8 million, or a margin of 1.12% on business turnover. When questioned on these figures, Philia's managers declared that the calculations are "erroneous", but preferred "not to define to what extent, as this would reveal the company's internal commercial policy".[67]

Denis Christel Sassou Nguesso is in charge of all sales of the state's share of Congolese crude. Congo's oil sector suffers from serious governance shortfalls.
© Jeune Afrique / Baudouin Mouanda

2.3 SOME HIGHLY LUCRATIVE PAPERWORK

According to the documents in our possession, Philia's profits are distinctly higher in Congo than in Gabon, even though the transactions in both countries are for the same products. Philia's margins on Congolese fuel oil oscillate between $9.5 and $20.5 per tonne, from which the margins on its turnover fluctuate between 0.41% and 2.09%.[68] The 0.41% may appear surprisingly weak, but according to our information it results from a litigation that arose regarding the quality of the product delivered – the transaction is therefore not representative. According to our estimations, the company's margins are usually between 1% and 2%.

Again based on our documents, Philia's margins are distinctly lower in Gabon, ranging from $5 to $6.5 per tonne of fuel oil, equivalent to between 0.69% and 1.07% of the turnover on its cargoes from Sogara.

A Geneva-based trader specialised in African petroleum products confirmed that "the margins obtained in Congo are higher than one would usually expect". Philia's managers preferred not to divulge more information when questioned.

Flipping cargoes in Pointe-Noire

Even more striking is the fact that these margins appear to have been generated without exerting any effort: neither the cargoes from Coraf nor those from Sogara in 2013 seem to have been lifted by Philia itself.

According to one source, Philia did not lift a single cargo from Coraf in 2013, but instead immediately resold most of its purchases on to third parties. These resales took place in Pointe-Noire, Congo or at Coraf, and the majority under the same contractual conditions (with the exception of the price) as the original purchase.[69] Borrowing from industry jargon, Philia "flipped" its cargoes, meaning in this case that it substituted Coraf by acting as an intermediary with actors on the international market.

Our documents reveal that Philia did not partake in most of the physical operations connected to its nine transactions[70] with Coraf in 2013: in six cases "flips" certainly occurred and in one they are strongly suspected. For the remaining two cases we have doubts, although an internal document from Philia tends towards confirming our hypothesis.

Questioned on the subject of these back-to-back sales, Mr Okoli assured us that Philia "is not simply a broker. The company does not only re-sell cargoes of oil to third parties under the same conditions that it acquires them from suppliers, particularly Coraf; Philia SA is required to provide much broader guarantees regarding the quality and composition of the oil, guarantees that it absolutely does not obtain from Coraf or any other supplier". He adds: "using internal specialists, Philia carries out important analyses on every shipment of oil in order to determine what it can

Pointe-Noire, Congo.
© Antonin Borgeaud

sell, to whom, at what cost and to what ends. In doing so, Philia takes on all the risks associated with selling these products on the market. On multiple occasions, Philia has even lost money during the resale of certain products that did not match the quality demanded by its counterparties on the market".[71]

One trader, who wished to remain anonymous, refuted that Philia engaged in any risk-taking connected to product quality: "the buyer and seller agree on the product's quality on the moment of the contract's conclusion. The buyer is therefore perfectly informed on what it is buying and Philia on what it is selling, unless of course the product's specifications are illegal or different to those detailed in the contract. The quality of the products lifted by Coraf are for that matter generally quite stable."

The majority of Philia's re-sales to third parties occurred under the same contractual conditions. Only the unit price per tonne changed with each transaction, at times generating Philia significant margins for no logistical work. In other words, for the majority of these transactions, Philia pocketed profits for a simple exchange of paperwork.

The fuel oil remains "Swiss"

Our documents enable us to reconstruct four such transactions that took place in September and October 2013 between Philia and other Swiss traders, including Geneva-based Mocoh SA and Zug-based AOT Trading SA.[72]

These third parties paid Philia via its account at Zenith Bank (UK) Ltd., the London arm of Nigerian Zenith Bank. The commodity giant Mercuria also acquired two shipments; however, contrary to the above cases, on this occasion it was Philia that paid the cost and freight (CFR).[73]

Figure 3 below shows the physical and financial flows behind of one these transactions.

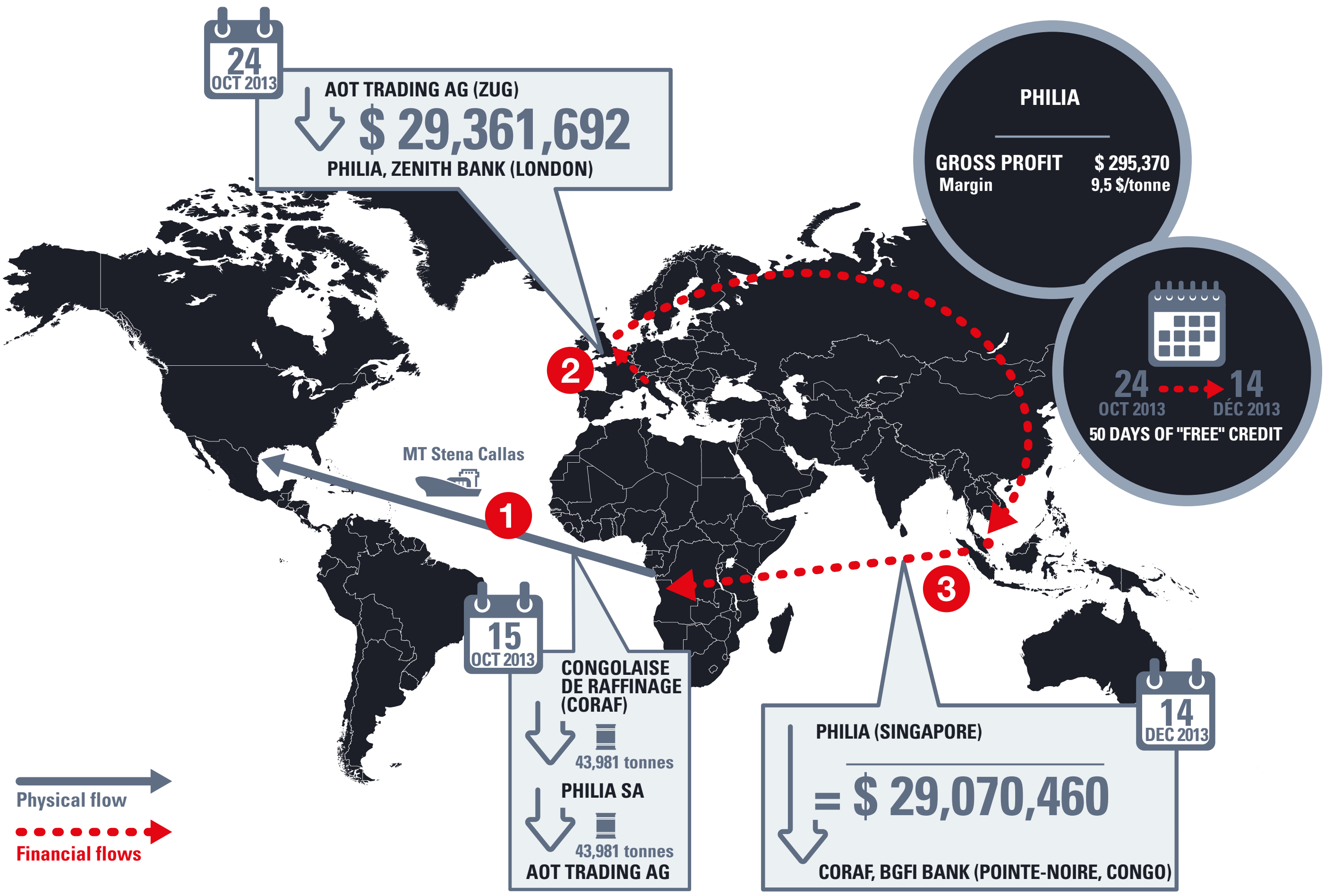
Over $400,000 in profits

Three other transactions from May, October and November 2013 enable us to establish that Philia also resold fuel oil and naphtha directly from Pointe-Noire to third parties. Invoices for October and November exemplify that the re-sales were undertaken under contractual conditions identical (with the exception of the price) to those with Coraf. In these two cases, the buyers were British Petroleum (BP) in London

Figure 3

PHILIA'S PROFITABLE BUSINESS MODEL

The physical and financial flows of a fuel oil cargo



1 On 15th October, Geneva-based Philia buys 43,981 tonnes of fuel oil from the Congolaise de raffinage (Coraf) and re-sells it the same day to AOT Trading AG based in Zug, Switzerland. AOT then lifts and delivers the fuel oil to its US-based client. The re-sale takes place under the same conditions, with the exception of the unit price per tonne that constitutes Philia's gross profit.

2 Ten days later, on 24th October, AOT Trading AG transfers $29,361,692 to Philia's account at Zenith Bank in London.

3 On 14th December, 60 days after the transaction, Philia transfers $29,070,460 to Coraf's account at BGFIBANK in Congo, including a retrocession of 30% ($126,587) of its gross profit ($421,957, including $4,138 of "other costs"). For 50 days (between 24th October and 14th December), Philia benefits from "free" credit.

*A provision of the contract between Coraf and Philia states that Philia must retrocede 30% of its gross profit to Coraf. Although we have no evidence, we start from the assumption that these retrocessions did take place.

Congo's refinery, Coraf, processes around 12% of the state's share of Congolese crude into refined products. Gasoline feeds domestic demand, while fuel oil and naphtha are exported. Philia lifts the majority of these exports. Oil refinery in Pointe-Noire, Congo. © Antonin Borgeaud

and a Dubai-based firm, B.B. Energy (Gulf) DMCC.[74] For its deal with B.B. Energy, involving the ship MT Cape Troy on its path to Abidjan and Malta, Philia made a gross profit of $673,377 using a unit price of $20.50 higher than its purchase price. If we subtract the 30% cut that Philia is contractually obliged to cede to Coraf,[75] its gross profit totals $471,364.

Two transactions were incompletely documented, preventing us from establishing with certitude whether or not Philia resold its cargoes and under what conditions. We believe, however, that the buyers were the Nigerian group, Talaveras,[76] and Concord Energy, a Singapore-based company with an office in Geneva.[77]

According to our information, Philia conducted itself in a similar manner in Gabon in 2013, reselling fuel oil cargoes from Sogara to another Swiss trading company, Mezcor SA.

Enriching briefcase traders

This system of immediate re-sales recalls the case of Nigeria's "fictive" traders, otherwise known as "brief-case traders", frequently referred to in government reports or by NGOs. These companies are often connected to politically exposed persons (PEPs) and profit from crude oil export quotas, as they are otherwise in no position to trade due to a lack of logistical and financial capacity. Their operations consist of reselling goods to "real" traders in exchange for a margin of between $0.2 and $0.4 per barrel.[78] According to the reports' authors, these profits should instead fall into the hands of the national oil company and, by extension, the Nigerian people. In light of the similar business model apparently adopted by Philia in 2013,[79] we may infer that Congo's Coraf is also being deprived of profits.

2.4 A HIGHLY PROFITABLE CONTRACT

Beyond these immediate re-sale mechanisms, other clauses in the contract between Philia and Coraf, as well as the method by which it was obtained, also appear problematic. In order to understand the subtleties, we submitted the document to multiple traders and trade finance experts in Geneva. In general, the 8-page contract contains all that is necessary for a smooth execution, entering in detail into price, the duration of its validity, volumes, etc. It nevertheless contains multiple clauses likely to benefit Philia at Coraf's expense *(see figure 4)*. The conclusion of the experts consulted is unequivocal: Philia has greatly profited from Coraf's generosity.

FIGURE 4

PHILIA'S INGREDIENTS FOR SUCCESS WITH CORAF

CONTRACT OBTAINED WITH NO PUBLIC TENDER
↳ Philia short-circuits its competitors ✔

IMMEDIATE RESALES OF CARGO
↳ Philia achieves margins with no logistical effort and at low risk ✔

OPEN CREDIT
↳ Philia economises on fees and evades indirect regulation by banks ✔

60 DAY PAYMENT PERIOD
↳ Philia obtains "free" finance ✔

"MUTUALLY AGREED UPON" EXCHANGE RATE
↳ Philia deals with a Coraf manager in total opacity ✔

SNPC headquarters in Brazzaville. Denis Christel Sassou Nguesso controls all sales of crude oil and refined products. © *Getty images*

2.4.1 NO PUBLIC TENDER

Firstly, the contract did not result from a public tender, contrary to Mr Amvame Ndong's claims:[80] "In May 2013, we won a public tender against all the major trading companies for a spot contract [one-off transaction, ed.]. We resold this fuel oil shipment to Cargill. Philia then decided to be innovative by offering to conduct a study for Coraf that would eventually lead to the best price possible for its [Coraf's] fuel oil. The study – a qualitative analysis in collaboration with the SGS [Société générale de surveillance] and a company based in Amsterdam – aimed to find the best possible fuel oil outlets. At the time, Philia did not possess the means alone, so we undertook the study in collaboration with a few companies. This was a first in West Africa. Once undertaken, we submitted an offer to Coraf, subsequently accepted on the basis of a simple calculation: Philia would offer Coraf (unprecedentedly) stable margins and profit share."

We have not had access to this study. Moreover, why does Philia go to the effort of finding the best fuel oil outlets for its partners, who in any case choose for themselves? This puzzle has led us to infer that it is in fact a phantom service.

Township in Pointe-Noire, kilometres away from Coraf’s headquarters. Congo is highly illustrative of the resource curse: despite the country’s oil wealth, its population remains very poor. © Lucas Pistone / Notimex

2.4.2 LONG REPAYMENT PERIODS

The contract on fuel oil between Coraf and Philia contains numerous clauses likely to benefit Philia at the expense of the Congolese refinery. Firstly, according to the terms of payment detailed in the fuel oil contract, Philia must reimburse Coraf “no later than 60 days after the B/L [Bill of Lading, ed.] date”. Multiple traders interviewed confirm that such a long payment period is unusual and very generous. In the contract with Sogara, Philia received invoices with a payment period of 8-10 days (according to those in our possession). Similarly, Philia demands to be paid within 10 days by the counterparties who buy its products.

In Coraf’s case and in accordance with the contract, of the seven invoices in our possession, one contains a payment period of 60 days after loading, four of 30 days (already long, as explored above) and two of 15 days. What is the advantage of such long payment dates?

Coraf, or “Philia’s bank”

Two senior trade finance managers from large Geneva-based banks view it as “a form of credit” granted to Philia by Coraf, positioning the refinery therefore as the former’s de facto bank. In fact, Philia is able to finance the shipment (and quite possibly others too) for free, thanks to the cash flow that it benefits from during the period between the receipt of the sale to third parties and the repayment of the purchase to Coraf (between 20 and 50 days for these five transactions). In comparison, Coraf must wait much longer to receive its payments than the “standards” generally upheld by the industry.

In light of the sums in question this clause is extremely important, as Catherine Jago and Liz Bossley, authors of one of the rare reference texts on oil products trading, explain: “A cargo of oil products could be worth as much as $50 million. Lost interest for one day on that amount could be worth about $5,000”.[81] With such a long delivery date, Coraf – as Philia’s creditor – loses out on a large amount of interest. The two specialists continue to list a few examples of when payments should usually take place: ten days after the loading (B/L) date, three days after the unloading date or five calendar days after the Notice of Readiness (NOR), a maritime document stipulating whether the ship is ready to load or unload.

Philia’s managers chose not to respond to our questions on this.

2.4.3 A "MUTUALLY AGREED UPON" EXCHANGE RATE

Another questionable clause in the contract concerns the terms of payment. Article 12 stipulates that the payment will be made in US dollars (usual currency in the energy sector), "or in euros using a conversion rate that is mutually agreed upon before the date of payment". According to our research, Coraf's need for euros is explained by reasons relating to conversion with the Central African CFA franc.

But *who* exactly, particularly within Coraf, defines this exchange rate? Is it a fair rate for Coraf? And if not, why would Coraf accept an unfavourable exchange rate?

One source maintains that Philia makes "undue commissions" through the manipulation of exchange rates, at times amounting to €200,000 per transaction. However, as all the invoices in our possession were drawn-up in dollars, they provide no information on whether or not this occurs with Coraf. We therefore have nothing to prove whether or not the payments were transfered in euros, nor with what exchange rate.

A "fixed margin negotiated with the bank"

Concerning Gabon, certain documents in our possession provide information on the exchange rate used by Philia and Sogara for a purchase of atmospheric residue.[82] Emails and an invoice reveal that, for a transaction of $18,682,482.18 on 5th December 2013, Philia benefitted from a dollars/euros exchange rate of 1.3755 with the bank BNP Paribas (Switzerland) SA.[83] On the contrary, in its declarations to Sogara, Philia declared an exchange rate of 1.3763 – equivalent to 8 additional basis points – as well as an additional commission of 35 basis points, declared as "a fixed margin agreed upon with the bank". Together, these generated a final overall rate of 1.3798, equivalent to 43 basis points. This difference, in turn, is equivalent to a "margin" of €42,327.99 that, in all likelihood, benefits Philia at Sogara's expense without a legitimate reason.

One source involved in the transaction confirmed that once Sogara identified this irregularity, the issue was resolved. We have contacted an employee of Sogara in charge of the contract, both by telephone and email, but did not receive a response.

Philia denies everything, brandishing a letter of proof from its fiduciary showing exchange rate profits of 1,474.49 CHF for the period of 26th October 2012 (the date the company was established) to 31st December 2013. However, by presenting aggregate figures, Philia is not able to disprove the unit elements specific to the transaction with Sogara outlined above. Similarly, by presenting a letter of proof that refers only to Philia (Switzerland), while the Congolese contract was with the Singapore-based entity of the group, it is unable to

dismiss further questionable elements relating to its contract with Coraf.

Questioned again on this point, Philia's directors stated that the 35 basis point "margin" initially negotiated on the contract with Sogara was a consequence of its risk-taking on exchange rate volatility. The letter of proof proves that it is "erroneous to indicate that these 'margins' benefitted Philia and penalised Sogara". Regarding the fact that the letter of proof did not relate precisely to the aforementioned transaction with Sogara, they state that "Philia does not wish to revisit the details of these operations with the Berne Declaration, as the figures reveal the secrets of its commercial activities". Mr Okoli associates these allegations with attacks from ex-employees or Philia's competitors, disappointed that they themselves did not win the contract.[84]

In the absence of a satisfactory response from Philia, we posit that the exchange rate adopted with Sogara has no economic justification and maintain, therefore, that the €42,000 "margin" is illegitimate.

A ghost amendment

Despite four consecutive interviews, we have struggled to obtain precise answers from Philia regarding the "mutually agreed upon" aspect of the dollars/euros exchange rate employed with Coraf. During the first interview with Mr Okoli and Maître Michel Bussard, Philia's lawyer, on the 2nd June 2014, we were assured that a contract amendment was signed on this matter. This modification would have clarified the exchange rate employed. They did not wish to show us the amendment, however, and during our second interview on the 1st October 2014, they claimed that it never existed. Mr Okoli also eventually explained that the exchange rate was agreed upon by Jean-Jacques Makaya, Coraf's Financial Director and co-signatory of the invoices for the lifting of fuel oil and naphtha, adding that "no one wants to lose money".

By stating this, Mr Okoli implicitly admits that at least some of the invoices were settled in euros, even though they were drawn-up in dollars. The clause provisioning a "mutually agreed upon" conversion rate was, therefore, implemented. However, as we have been unable to read the relevant documents, we are unable to identify whether this rate was a fair deal for Coraf.

Regarding Mr Makaya, one source reveals that he met Mr Amvame Ndong in the summer of 2013 in a nightclub in Saint Tropez in the south of France. Another states that Philia invited Mr Makaya to the 5-star hotel, La Réserve, during his visits to Geneva. We have been unable to verify either of these statements. Mr Amvame Ndong himself acknowledged that he met Mr Makaya in Saint Tropez, but states that this was "for purely private matters". He further acknowledged that he met Mr Makaya at La Réserve, but that the latter's stay was not on Philia's bill.[85]

Denis Sassou Nguesso, President ssince 1979 (minus Lissouba's brief interlude). Congo's subsoil wealth has provided the means to entrench his power and enrich his clan.

© Keystone / Martial Trezzini

2.4.4 CREDIT CALCULATED ON CONFIDENCE

There is yet another questionable aspect of Philia and Coraf's contract: Coraf accepted to be paid in open credit, a mode of payment employed by trading companies with a number of benefits for the buyer – in this case, for Philia.

Firstly, open credit – a method less commonly employed than letters of credit[86] – does not require any financial guarantee from the buyer. It is, therefore, a model that is much less safe for the seller than letters of credit. This means that if Philia were to default, Coraf would incur a net loss equivalent to the value of the shipment, which, as showed above, could be up to $30 million. If the price of fuel oil on the international market fell significantly such a scenario could have occurred, as Philia guaranteed Coraf a price of $50 per tonne under contract.

"Open credit is [therefore] reserved for entities that have worked together for a long time", one trader explained. His claim is supported by the Director of Trade Finance at a large Geneva-based bank, who stated: "it is not normal that such a small company benefits from open credit. It is a model that can be justified between two private parties that trust one another, but no state-owned company should ever risk public finances through such practices".

Generally speaking, only companies that boast a clear score sheet in the eyes of a credit rating agency or "majors" that pose very little solvency risk, such as BP or Shell, benefit from offers of open credit.[87] This is clearly not the case with Philia, whose first ever contract was secured with Coraf.

Dodging banks' scrutiny

Another non-negligible advantage of open credit is that it permits Philia to economise on the bank fees associated with the issuance of a letter of credit. Such bank fees may vary between 15,000 and 60,000 CHF, according to estimations provided by traders and trade finance specialists. When compared to the gross profits outlined above, these are significant sums.

Finally, open credit allows Philia to avoid the compliance procedures that banks would undertake before granting the company a letter of credit. This advantage accumulates alongside the "free" credit Philia benefits from due to the long payment periods authorised in its contract with Coraf, detailed above. These two clauses permit Philia to finance transactions without resorting to banks' credit. Philia thus evades the scrutiny of the sole form of regulation, albeit indirect, that Swiss trading companies' transactions are subjected to. As porous as it is, this indirect regulation sometimes permits illegal operations to be identified.[88]

Mr Okoli retorts that his company merits the trust accorded by Coraf: "It is erroneous to suggest that open credit is not common practice in lifting oil in West Africa. On the contrary, when the managers are known by the national oil company and the company's activities are well-regarded in the oil sector, open credit becomes the rule." Mr Amvame Ndong added that Philia benefits from open credit in Gabon and Senegal too, where the group is also engaged in lifting cargo.[89]

Box 4

BGFI, a "100% private" bank

Coraf's invoices addressed to Philia demand the sum to be paid into an account held at BGFIBank Congo, a subsidiary of BGFIBank. This bank merits a little scrutiny, notably regarding its incestuous relations with political leaders in a number of countries where it operates, as well as its controversial history in the Republic of the Congo.

The bank boasts to be the "first African financial company" to have signed the UN Global Compact, demonstrating its alleged commitment to the fight against corruption.[90] It describes itself as a leader in Gabon and Congo. It also claims to be "100% private" – clearly adopting a very broad interpretation of "private", however, as some of its subsidiaries are directly owned by the state – in Cameroon and Equatorial Guinea, for example.[91] Its Congolese subsidiary is no exception in its proximity to power.

To begin with, a certain "Mrs Bongo Ondimba" was a 5% shareholder until at least 2011.[92] Today, "Mrs Ondimba" appears to have been replaced by a company that goes by the name of Yao Copr SA. However, Gabonese President Ali Bongo's sister, Pascaline Mferri Bongo Ondimba, is also "represented" via Delta Synergie, another 10% shareholder of Congo's BGFIBank.[93] In addition, she is manager of the group's umbrella holding, BGFI Holding Corporation SA, under the title of "Senior Official, Inspector-General of Finance". Delta Synergie is a 6.4% shareholder.[94]

The Congolese subsidiary is, in turn, run by Jean-Dominique Okemba. Okemba received a Legion of Honour from Nicolas Sarkozy[95] in February 2011 and is no less than the "Head of the National Security Service (CNS, Secret Service)"[96] and nephew of the Congolese President.

Incidentally, it was via the BGFIBank in Gabon that Denis Christel Sassou Nguesso transferred payments of up to €402,000 to the French luxury tiles company, Villa Paris, in 2006 and 2007.[97] These purchases were revealed during the investigations of the Biens mal acquis affair.

The BGFI also has a rather interesting history in Congo. It was the successor of the Banque française intercontinentale (FIBA) – the bank that serviced ex-Gabonese President Omar Bongo and Elf, a company closed down in the wake of the judicial procedures initiated by examining magistrate Eva Joly in the 1990s in France's biggest ever corruption scandal. Its current Directors make no attempt to mask the case, recounted in detail on the bank's website: "On 31st March 2000, FIBA was shut down in Congo, an event that accelerated the inauguration of BGFIBank in Brazzaville". Its creation "responded to demands expressed by the Congolese authorities, who wanted access to a quality financial institution from the 1st April 2000" – the next day, that is. BGFIBank took over FIBA's offices, all the while assuring that "contrary to rumours, it was not taking over FIBA *[per se]*", despite confirming that 80% of its clients would undoubtedly join them,[98] including, of course, Coraf and SNPC, according to EITI reports.

2.5 PHILIA: A FUTURE OFFSHORE EXPLORATION COMPANY?

Congo has other surprises in store for Philia. The small Genevan company had the chance to buy an oil exploration permit covering an offshore block, known as Marine XIII, from another Swiss company, Cliveden. Marine XIII is not in production, and "the purchase is yet to be approved by the Congolese authorities", states Philia.[99] EITI's latest report confirms that the decree approving Philia and the Congolese state's production sharing agreement was finalised in 2014.[100] Philia obtained 90% of Marine XIII, while SNPC retained 10%.

Cliveden acquired the contract (90% participation) in 2008 for a period of four years.[101] We contacted Cliveden, but they chose not to comment on the results of its exploration activities or on why it sold the permit. Mr Amvame Ndong expanded a little: "Cliveden presented the field to a number of companies, majors, none of whom wanted to collaborate. It was unable to follow-up alone for financial reasons".[102]

Treasure breaching two permits?

We do not know exactly when Marine XIII's supposed riches were discovered. Indeed, the permit's unknown treasures were perhaps the reason why Cliveden decided to sell it when the contract expired in November 2012. However, according to maps, Marine XIII is located within a large field called Djambala that also straddles the adjacent permit, Marine VI, held by the Italian giant ENI. According to the 2007-2009 EITI report, ENI has been in production since 1999.[103] This was a stroke of luck for Philia: if oil is discovered in Marine XIII, ENI would be obliged to concede crude to Philia, as the Italian company would be fully exploiting a field that it only partly owns.

Although the possibility that the field straddles two permits is apparently not absurd, Mr Amvame Ndong nonetheless responded in an evasive manner: "there may be some continuity, but this is very common".[104] Very common but not inconsequential: according to one source, it would represent a true jackpot if acquired at such a low price. Mr Amvame Ndong was not willing to divulge the amount paid, but instead assured us that "it was not for free". We await the EITI report for the year 2014 for information on the precise amount Philia transferred to the Congolese state in the form of a signature bonus.

Mr Amvame Ndong confirmed that Philia benefits from experience in the oil-producing sector: "we have undertaken economic studies on an oil major's acquisitions in Africa". He further refutes that Philia aspires to act simply as an intermediary looking to sell-on its participation in this field to another company capable of producing offshore: "the period between exploration and production can be up to seven years. There are phases. Generally, it's not the company that explores the field that will end up exploiting it. It's common that an exploration company will cede the exploitation phase to a company endowed with more resources and experience". And yet, Maître Michel Bussard confirms that there is indeed a possibility: "if the permit contains a real gold mine, Philia would either form an alliance with a major to exploit it, or sell its rights to a company capable of deep-sea drilling".[105]

III – CONCLUSION

The investigation we have led into Philia's activities could very well never have occurred. The Geneva-based company is small, discrete and unknown outside of a small circle of industry insiders. It is one of around 500 trading companies active in Switzerland that, aside from one legal scandal, we are unlikely to have ever heard of. And yet the documents we received have enabled us to retrace in detail some of Philia's activities with Coraf, a Congolese state-owned company. Without these documents, it is unlikely that Philia would ever have our attracted our attention to the point of undertaking an in-depth investigation. We certainly would not have been able to describe its operations or analyse its business model with such precision.

Access to such detailed sources is a true rarity. As a general rule, the Swiss trading sector's opacity means that it is very difficult to obtain any accurate information on the deals undertaken. They therefore escape most scrutiny, despite the scale of their influence and effects on the populations of the producer countries. We are convinced that the facts in this report, although they only illustrate a small part of reality, are of strong public interest and illuminate the problematic practices that are so widespread in Switzerland's commodity sector. Such practices are facilitated, nurtured and protected by the lack of transparency and culture of secrecy that reigns in the small world of trading. They are encouraged by the absence of any effective regulation in Switzerland.

3.1 PHILIA: AT THE HEART OF A MISAPPROPRIATION OF FUNDS?

We have revealed nothing illegal in Philia's business deals, and the company itself arduously defends its legitimacy. Nonetheless, its business model and the preferential treatment it has received from Coraf are highly questionable, alarming all the experts, traders and bankers alike that we consulted. In 2013, Coraf chose Philia as its favoured business partner, granting the latter an important "term contract to export fuel oil". This contract – the centrepiece of our investigation – was not obtained through a public tender. Moreover, the contract appears to be unfavourable for Coraf, which takes serious financial risks by conceding fuel oil on open credit to Philia, a company largely unheard of in the trading world, with no payment guarantee. Further, by accepting such long payment periods, Coraf leaves its treasury devoid of tens of millions of dollars at a time, acting as Philia's de facto bank. Finally, Coraf authorises payments in euros using a "mutually agreed upon exchange rate", rather than fixing a reference rate explicitly detailed in the contract.

Philia's immediate re-sales to third parties on a systematic basis therefore seem to be of little economic interest to the Congolese state. The refinery does not retain the margin that a) it should rightfully account for and that b) should ultimately be destined for the public treasury. Worse still, the profits accumulated from such activities are (lightly) taxed where Philia is registered, i.e. in Switzerland or Singapore, not in Congo. While we have been unable to accurately calculate the precise losses from the five transactions analysed, we can affirm that they are substantial. They would have represented a significant financial windfall for Congo, a state dependent on revenues from its subsoil riches.

After investigation, we believe that it is no exaggeration to claim that Philia was able to "rapidly grow", in Mr Amvame Ndong's words, thanks to Coraf's generosity. Moreover, Philia profited from Coraf with zero logistical efforts and, more importantly, minimal risk-taking. How therefore can we explain the eligibility and favourable treatment of this little-known junior in the highly complex industry of oil trading? One way would be to imagine that Philia acts on behalf of a PEP, enabling the latter to directly or indirectly misappropriate oil rents. In the commodity sector, such mechanisms are common – the Berne Declaration has detailed a number, notably in Nigeria, Angola and Ukraine.[106] In some cases, intermediaries divert rents directly on behalf of a PEP; in others, their mechanisms are more subtle, ensuring that they appear to have no direct connection to the ultimate beneficiaries of the rents. In Philia's case, we possess no facts that would enable us to confirm that its profits swell the pockets of members of the Congolese elite. Yet, the company has not denied the existence of relations between its sole shareholder and the Congolese President's son, neither has it been able to prove that these relations had no effect on its acquisition of the contracts and their favourable clauses. We can only hope that the publication of this report draws out other facts proving, or disproving, our hypothesis.

© Getty Images

A township in Brazzaville, Congo's capital, plagued by a gaping void between the country's elite and the poor. *© Keystone / Pascal Deloche / Godong*

3.2 THE RESPONSIBILITY OF PHILIA'S SWISS "CLIENTS"

Philia is not the only Swiss company referenced in this report. The companies that bought the cargoes sold by Philia carry a moral responsibility, at least, if such goods were obtained from Coraf via illegal means. In the oil sector, trading majors are taking increasingly advanced measures to protect themselves from corruption risks. To do so, they often rely on intermediaries, frequently employed in countries where it is difficult to access commodities without some form of "access payments" to gatekeepers. Monika Roth, a compliance specialist, explains how, "in some countries, it is almost impossible to conduct business without directly or indirectly paying commissions. Officially, many traders have internal guidelines relating to combatting corruption. […] In theory, this signifies that it should be technically impossible to do business in certain countries, and yet business gets done." Roth continues by describing a model that is all too similar to that described above in Congo: "In order to directly or indirectly satisfy local interests without paying commissions, it is common to conduct business via the intermediary of a company part- or fully-owned by a PEP [politically exposed person]. In doing so, as a company shareholder, the PEP (totally legally) receives dividends."[107] In light of the facts laid out in this report, we may legitimately question whether the buyers of Philia's cargoes – Mercuria, Mocoh and AOT Trading – took steps to verify the legitimacy of their business partner's operations, notably by looking more closely at its beneficial owners, as well as the conditions under which they obtained the contract.

Mercuria was solicited on this matter, but chose not to comment. Mocoh confirmed existence of the deal, but preferred not to explain its due diligence procedures pertaining to business counterparties.[108] Finally, AOT Trading, stressing that it is a private company, claims to uphold a "policy" not to divulge any confidential information relating to its commercial activities, unless it is legally obliged to do so. Roland Borres, AOT's Finance Director, added that AOT does undertake "verification" before entering into business with a new client, with the goal of "knowing whom it's dealing with".[109] In this system largely based on self-regulation, we were forced either to quietly accept the trading companies refusals to reply, or to simply take their word for it.

3.3 BINDING REQUIREMENTS TO COMBAT THE RESOURCE CURSE

Beyond Philia's case, the facts documented in this report clearly illustrate the challenges connected to the sale of state oil – notably the risk of the misappropriation of oil rents by private interests, at the expense of the populations of producer countries. At a systemic level, we talk of the "resource curse" – a term coined to describe the fact that countries so rich in natural resources remain poor, despite the revenues generated by their subsoil wealth. This report has further highlighted the gaping void between the discourse of the trading sector and its practices. In doing so, it has revealed the limits to the regulation covering the sector in Switzerland. In order to prevent Swiss trading companies from contributing to the resource curse, the Berne Declaration has proposed a Swiss commodity market supervisory authority. Independent of this, a number of binding measures should also be immediately adopted in order to improve the responsibility of the Swiss trading sector. We explore each in turn below.

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IV – RECOMMENDATIONS

As the world's number one commodity trading hub, Switzerland carries an important responsibility. To minimise the specific risks presented by the sector, the Berne Declaration suggests that the Swiss government adopts a series of legally binding measures.

4.1 PAYMENT AND CONTRACT TRANSPARENCY

When it comes to administering or purchasing oil – the principal riches of a country like the Republic of the Congo – transparency is fundamental. Payment transparency and contract disclosure for all deals between companies and state-owned entities are crucial for verifying the legitimacy of these commercial operations and for minimising the risk of a misappropriation of oil rents. It is only with such transparency that the populations of producer countries are able to scrutinise the revenues drawn from the exploitation of their natural resources and hold their governments accountable.

The BD asks that the Swiss government includes trading activities in its proposed law on payment transparency *(see box 5).*

Box 5

The Swiss government's smokescreen law

In December 2014, the Swiss government published a preliminary bill providing for improved payment transparency in the commodity sector.[110] The report underlined three points: 1) the importance of stemming the resource curse in producer countries; 2) that transparency is a precondition to any such achievement; and 3) that, as a host country for a sector very active in producer countries, Switzerland holds "particular responsibility". Yet, in limiting transparency requirements to the extractive industry, the government has excluded the tra-

4.2 SUPPLY CHAIN DUE DILIGENCE

To this day, there is nothing in Swiss law that obliges companies to ensure that the commodities they place on international markets via Switzerland were acquired using legal means. In order to reduce the risk that commodity rents may be misappropriated by corrupt elites, it is crucial that commodity traders ensure the legitimate origins of the resources they trade. The same goes for ensuring that they do not result from labour conditions involving human rights violations or that they come from conflict zones. This implies that the traders should know and carefully document their supply chains. These due diligence practices should be undertaken with particular vigilance if the trading company is dealing with an intermediary selling commodities originating from a country at risk, such as Philia in the Republic of the Congo.

The BD asks that all Swiss companies active in the commodity sector are required to know and accurately document their supply chains.

ding sector, regardless of the fact that it occupies a central position in the Swiss commodity sector.[111] The Swiss authorities have nevertheless reserved the right to include this activity on order dependent on international developments, *i.e.* only it other trading hubs make the leap first.

Furthermore, the Swiss government has not foreseen any provision that would require commodity traders to publish their contracts with state-owned entities. In the extractives sector, such requirements are increasingly common.[112] Trading activities should also be submitted to contract transparency requirements in order to ensure that the producer country does not receive unfavourable prices or contract clauses vis-à-vis its natural resource sales.

In the meantime, trading companies should take responsibility by publishing their payments to governments on a voluntary basis. Trafigura has taken the lead by publishing this information for its activities in EITI member countries. Sadly, it has failed to do so for all the countries in which it operates.[113] As yet, very few trading companies have made such a commitment. Despite the fact that Swiss traders occupy an important market position in many states where corruption is endemic,[114] the majority of the business they conduct with public entities escapes all scrutiny.

4.3 BUSINESS PARTNER DUE DILIGENCE

It is imperative that Swiss companies in the commodity sector analyse and document in detail their business partners. As soon as they operate in a country where corruption is endemic, such as Congo, they should abstain from entering into business with companies that present elevated risk profiles.

Moreover, it is paramount that the companies active in the sector, as well as their financial intermediaries, are able to precisely define the beneficial owners of their counterparties. In Switzerland, there are no existing mechanisms to determine a company's beneficial owners. Any Swiss trader, such as Philia, wishing to determine who is behind an intermediary that it aims to go into business with, is entirely dependent on the information provided by the latter.

The BD proposes that all deals drawn-up with public and private companies with elevated risk profiles are subjected to independent third party authorisation. It further demands that the beneficial ownership all of companies is listed in public registries.

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4.4 CREATION OF A SECTOR-SPECIFIC SUPERVISORY AUTHORITY

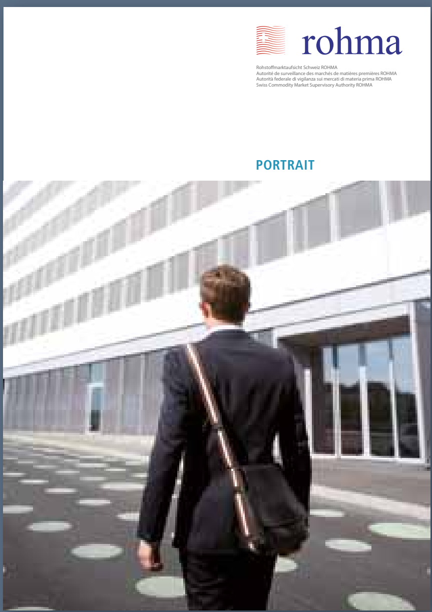
The Swiss traders and government are quick to argue that it is not necessary to regulate their operations, stating that they are already indirectly regulated by the banks. Even though generally-speaking the banks analyse in detail the deals they finance from a legal perspective, they themselves recognise the limits of this exercise.[115] Moreover, banking establishments generally only apply due diligence procedures to their business partners, but not to their partners' partners. Finally, many trading operations may be concluded without financing from banks, as our analysis of Philia and Coraf's contract has revealed. Due to the preferential clauses Philia obtained from the refinery, the former was able to escape all the forms of indirect scrutiny that a bank could have exercised over its operations.

In Switzerland, there is no supervisory authority that regulates the activities of companies in the commodity sector. It is imperative that their operations are submitted to precise rules and that an independent authority ensures compliance with them. Moreover, it is important that any shortfalls identified are sanctioned by appropriate measures.

To combat the specific risks inherent to this sensitive sector, the BD has proposed a Swiss commodity market advisory authority ***(see box 6).***

Box 6

ROHMA: A sector-specific supervisory authority



In September 2014, the BD sparked debate on regulation of the Swiss primary commodity sector by devising a fictitious supervisory authority inspired by FINMA, the Swiss financial market supervisory authority. As an independent authority, ROHMA (taken from the German, *Rohstoffmarktaufsicht*) could contribute to reducing Switzerland's contribution to the resource curse and to mobilising resources for development and poverty reduction in resource-rich developing countries through supervision and regulation of commodity production and trading companies, as well as gold refineries and importers.
ROHMA would ensure that the aforementioned companies would carry out enhanced due diligence practices, including:

- with respect to the entire supply chain to prevent trading in illegal or illegitimate commodities, commodities that have been acquired in violation of human rights or environmental standards, or commodities that have been sold in order to finance conflict or criminal organisations;

- with respect to a company's business partners to prevent transactions unauthorised by ROHMA with politically exposed persons (PEPs), whose privileged position could negatively affect business.

Similarly, supervision would ensure that companies meet their obligations with respect to contract and payment transparency, adhere to international sanctions and refrain from aggressive tax avoidance practices. The supervisory authority would ensure that companies meet all their license conditions, as well as all legal and regulatory requirements, on an ongoing basis. Finally, through ROHMA, Switzerland could become a pioneer in regulating the commodity sector and could, therefore, engage at an international level to encourage other international commodity trading hubs to implement similar rules to counter the resource curse.

For more information, see:
www.ladb.ch/rohma
or www.rohma.ch

V – EXECUTIVE SUMMARY

This report presents the results of the Berne Declaration's in-depth investigation into the highly questionable business relationship of Philia, a Swiss trading company, and the Société Congolaise de raffinage (Coraf), the Republic of the Congo's state-owned oil refinery. The report reveals how Philia has benefitted from favourable treatment from Coraf at the expense of the public treasury and, therefore, the Congolese people. There is a lot at stake: oil is Congo's principal source of revenue; it is a source of immense potential wealth for a population that otherwise remains very poor – a shameful example of the resource curse that so many producer countries suffer. Far from unique, this case illuminates the problematic practices that are widespread in Switzerland's commodity sector. Such practices are facilitated, nurtured and protected by the lack of transparency that reigns in the small world of trading. They are encouraged by the absence of any effective regulation in Switzerland.

Our investigation draws upon exclusive documents, primarily a "term contract to export fuel oil" concluded between Philia and Coraf in May 2013. The contract, sent to us by an anonymous source, was signed by Denis Christel Sassou Nguesso, Coraf's General Administrator and son of none other than the (notoriously corrupt) Congolese President. This contract granted Philia the totality of Congo's fuel oil exports between the 1st June and 31st December 2013, renewable for one year "after evaluation in January 2014". According to the other documents we have received, Coraf transferred five cargoes of fuel oil to Philia in 2013. By reselling this fuel oil, the Swiss trader turned over $140 million, to which we can add $35 million resulting from the resale of four cargoes of naphtha.

A refined contract

Philia did not obtain this fruitful contract via a public tender process. Moreover, the contract contains multiple suspicious clauses that are unfavourable for the Congolese refinery:

- Coraf takes serious financial risks by offering fuel oil on open credit to Philia, a small company largely unheard of in the trading world, with no payment guarantee.

- Coraf accepts longer than usual payment periods, leaving its treasury devoid of tens of millions of dollars for extended periods of time, and in doing so acts as Philia's de facto bank.

- Coraf authorises payments in euros using a "mutually agreed upon exchange rate", rather than fixing a reference rate explicitly detailed in the contract.

In addition to enabling Philia to economise on its banking fees, the clauses granting open credit and long payment periods permit Philia to finance other transactions without borrowing from any financial establishment. The Swiss company is thus able to avoid the compliance procedures typically undertaken by banks before issuing a letter of credit. Consequently, Philia evades the scrutiny of the sole form of regulation (albeit indirect) that covers Swiss trading companies' transactions.

Flipping cargoes in Pointe-Noire

Beyond the term contract to export fuel oil, Philia's general business model in Congo is highly problematic. The Geneva-based company systematically resells its cargoes from Coraf under the same contractual conditions (with the exception of price) to other Swiss traders – Mercuria, Mocoh and AOT Trading. By acting as a pure intermediary, Philia pocketed substantial profits for a simple exchange of paperwork. Coraf's choice of business partner appears to have little economic justification. The state-owned refinery not only takes a serious financial risk, but also denies itself of significant revenue.
The numerous experts we have consulted are unanimous in their conclusion: Philia has profited from Coraf's generosity at the latter's expense. This favourable treatment, yet to be justified, enabled Philia to position itself in Congo's exclusive downstream oil sector, as well as to extend its operations across other countries, notably Gabon and Senegal. It has deprived the Congolese population of the oil-derived revenue crucial for the country's development. While we have been unable to accurately calculate the precise losses accounted for by the transactions analysed in this report, we can affirm that they are substantial.

Philia: at the heart of misappropriated funds

While Philia's business deals reveal nothing illegal, it remains to be explained how and why this little-known junior has been deemed an eligible business partner, as well as the disproportionate profits reaped from its business in Congo. We hypothesise that Philia has been acting on behalf of politically exposed persons (PEPs) for whom it (directly or indirectly) diverted part of the oil rents. Such mechanisms are common in the trading sector – the Berne Declaration has detailed a number, notably in Nigeria, Angola and Ukraine. In some cases, intermediaries divert rents directly on behalf of a PEP; in others, their mechanisms are more subtle, ensuring that they appear to have no direct connection with the ultimate beneficiaries of the rents. In Philia's case, we possess no facts that would enable us to confirm that its profits swell the pockets of members of the Congolese elite. A matrix of facts nevertheless implies that Philia's sole shareholder, Jean-Philippe Amvame Ndong, entertained a close relationship with Denis Christel Sassou Nguesso. Multiple sources interviewed confirm that the two are indeed friends. They regularly spent time together in the south of France where Mr Amvame Ndong lived for a number of years. Certain witnesses further reveal how Philia's personnel were engaged in providing private services of all sorts to the Congolese President's son.

Consulted on multiple occasions, Philia's managers have continually affirmed that their business activities are legitimate, profusely defending themselves. In spite of full transparency from our side, Philia tried to prevent the publication of this report via legal proceedings, first in the canton of Geneva where the company is domiciled, then in the canton of Vaud where the Berne Declaration has its French-speaking office. The court dismissed two of the appeals; Philia retracted the other two. But

The Republic of the Congo and the resource curse

- **President:** Denis Sassou-Nguesso, in power since 1979
- **Economic growth:** 3.5% - 8% of GDP between 2004 and 2014
- **Oil** generates 80% of public revenue
- **Corruption ranking:** 154^{th} out of 177 countries
- **Human development index:** 140th out of 187 countries
- **50% of the population** live below the poverty line

Denis Christel Sassou Nguesso, the President son, is in charge of all sales of the state's share of Congolese crude. Congo's oil sector suffers from serious governance shortfalls.
© Jeune Afrique / Baudouin Mouanda

Who profits from "profit oil"?

In order to understand this case, it is essential to describe how the oil sector is managed in the Republic of the Congo, a country where public and private actors are intricately intertwined. Whether we are talking about oil production or trade, a small handful of people appointed by the President are in control of the allocation of oil permits. Since 2010, the son of the Congolese President, Denis Christel Sassou Nguesso, has been Deputy Director-General of the downstream sector at the Société nationale des pétroles du Congo (SNPC), as well as the head of Coraf. It is into the hands of this man – known for his extravagant expenditures documented in the "Biens mal acquis" affair currently underway in France – that the state's share of oil revenue, or "profit oil", therefore falls. While in theory this oil should generate substantial revenue for the Congolese state, Coraf is in reality a financial abyss. The reports of the Extractive Industries Transparency Initiative (EITI) reveal how, between 2011 and 2013, the national refinery did not repay the public treasury the financial equivalent of the oil it processed. The numbers are frightening: outstanding payments exist for over 12% of Congo's profit oil. What has come of these profits, amounting to around $600 million per year? The total opacity surrounding Coraf's operations makes it impossible to answer to this question.

"One does not engage in the oil sector in Congo without being associated with the presidential family; it's impossible. The logic is simple: the rare public tenders are an illusion, destined to reassure the international community. But it's all biased; the candidates do not have the same terms of reference".
Former Congolese oil minister

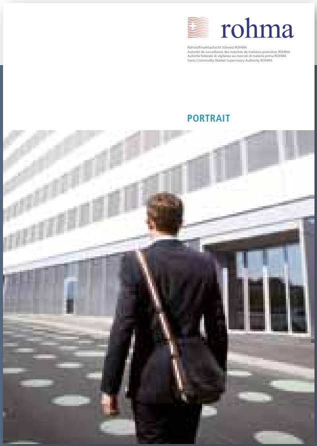
Philia's managers have not denied the existence of relations between its sole shareholder and the Congolese President's son, neither has it been able to prove that these relations had no effect on its acquisition of the contract and its so very favourable clauses. We can only hope that the publication of this report draws out other facts proving, or disproving, our hypothesis.

The responsibility of Philia's Swiss "clients"

Philia is not the only Swiss company referenced in this report. The companies that buy its cargoes carry a moral responsibility, at least, if such goods were obtained from Coraf via illegitimate – or illegal – means. Did Mercuria, Mocoh and AOT Trading undertake any steps to verify the legitimacy of Philia's operations, its beneficial owners and the conditions under which it obtained the contract? We can legitimately doubt this.

Combatting the resource curse

In order to prevent Swiss trading companies from contributing to the resource curse, the Swiss authorities should adopt binding measures that go much further than the propositions made by the government in its "Rapport de base: matières premières", published in March 2012. As the world's number one commodity trading hub, Switzerland carries an important responsibility. To minimise the specific risks presented by the sector, the Berne Declaration has proposed an independent supervisory authority, ROHMA (after the German *Rohstoffmarktaufsicht*), charged with regulating and controlling the Swiss commodity sector.



Recommendations for the Swiss government:

- **Ensure payment and contract transparency for all contracts concluded between Swiss companies active in the commodity sector and governments or any public entity.**
- **Require all Swiss companies active in the commodity sector to undertake supply chain due diligence.**
- **Require all Swiss companies active in the commodity sector to undertake due diligence on their business partners.**
- **Establish a supervisory authority for the primary commodity sector such as ROHMA, as proposed by the Berne Declaration (for more information, see: www.ladb.ch/rohma or www.rohma.ch).**

Notes

1 ***Le Matin Dimanche,*** "Ces liaisons dangereuses du négoce exposent la Suisse", 30.03.2014.
2 The deadline we proposed was three weeks, from 24.10.2014 to 14.11.2014.
3 ***www.undp.org/content/undp/en/home/librarypage/hdr/2014-human-development-report/;*** accessed 21.10.2014.
4 ***http://www.africaneconomicoutlook.org/en/countries/central-africa/congo-republic/***
5 According to Transparency International's Corruption Perceptions Index, Congo was ranked 154th out of 177 countries in 2013: www.transparency.org/cpi2013/results; accessed 30.10.2014. On the World Bank's Ease of Doing Business Index, the country is ranked 179th out of 189 in 2014: ***http://francais.doingbusiness.org/data/exploreeconomies/congo-rep;*** accessed 30.10.2014.
6 IMF, ***Article IV Consultation,*** 09.2014 and U.S. Energy Information Administration, Congo (Brazzaville), 29.01.2014.
7 ***www.jeuneafrique.com/Articles/Dossier/JA2763p032.xml4/denis-sassou-nguesso-pct-snpc-denis-christel-sassou-nguessodenis-christel-sassou-nguesso-avant-d-etre-le-fils-du-president-je-suis-un-citoyen-congolais.html;*** accessed 16.10.2014.
8 In the supply chain, downstream refers to the sale and distribution of crude oil and refined products (gasoline, kerosene etc.). In this context, it refers largely to sales.
9 ***http://mhc.cg/societes_et_agences_sous_tutelle/la_snpc/la_coraf.html;*** accessed 16.10.2014. Despite their importance to the national economy, neither SNPC nor Coraf publish annual reports.
10 ***www.secours-catholique.org/IMG/pdf/Rapport_Pe_trole_Congo_fev_2011.pdf;*** accessed 30.10.2014.
11 ***http://globaleyez.info/wp-content/uploads/SassouNguesso-DCVisit092011.pdf;*** accessed 20.10.2014.
12 Judgement of a British court on kickbacks paid in Hong Kong by or for the account of one or multiple of Vitol's companies in favour of employees or representatives from the Republic of the Congo. Nevertheless, the procedure was in fact related to another issue; these kickbacks were never the object of a judgment. Cf.: ***www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2007/1128.html&query=Vitol+and+Kensington+and+Congo+and+Hong+and+Kong&method=boolean.***Accessed 19.11.2014.
13 ***www.globalwitness.org/sites/default/files/pdfs/2007_congo_press_release.pdf .***
14 ***https://www.globalwitness.org/sites/default/files/pdfs/long_beach_beneficial_ownership.pdf.***
15 See, for example: ***www.liberation.fr/societe/2013/12/15/biens-mal-acquis-au-tour-du-congo_966787***; accessed 20.10.2014.
16 All direct quotations in this report have been translated from French by the Berne Declaration. The original quotations are available in the French version of this report.
17 The expression "troika" is borrowed from La Lettre du Continent, "Denis Gokana, l'influent monsieur pétrole de Denis Sassou Nguesso", 26.09.2014.
18 Françafrique is the name given in French to France's network of political and economic influence in its former African colonies. The network, existing to this day, took root during the colonisation period and relies on both official and unofficial relationships. La Lettre du Continent, "Denis Gokana, l'influent monsieur pétrole de Denis Sassou Nguesso", 26.09.2014.
19 ***http://aogc-congo.com/index.php***; accessed 16.10.2014.
20 ***Africa Intelligence,*** "Denis Gokana, baron de l'offshore", No 721, 29.04.2014.
21 ***www.orion-oil.com/***; accessed 16.10.2014.
22 ***www.vd.ch/themes/economie/registre-du-commerce/recherche-dentreprise-ou-de-titulaires-dans-le-canton/***; accessed 16.10.2014.
23 Fabrice Arfi and Marine Turchi, "Sarkozy au Congo: les dessous d'une conférence embarrassante", Mediapart, 27.07.2014.
24 La Lettre du Continent, "Denis Gokana, l'influent monsieur pétrole de Denis Sassou Nguesso", 26.09.2014.
25 Verbal Testimony from l'Office Central pour la Répression de la Grande Délinquance Financière on 19.06.2013 regarding the "volet Sassou Nguesso". This document is not available to the public.

26 ***Libération,*** "Biens mal acquis, au tour du Congo", 15.12.2013.
27 The Extractive Industries Transparency Initiative (EITI) is a multi-stakeholder initiative that states adhere to on a voluntary basis. Member states must declare their revenues generated from extractive companies (licenses, royalties, taxes etc.) and extractive companies must declare all payments made to the host state, with the idea of reconciling the two sets of data. In 2013, the EITI adopted a new standard in which Article 4.1.(c) relates to states' commodity sales. Its implementation is not necessary to be ruled a conforming member, but it is nonetheless recommended. Congo has taken action; however, buyers' payments are not disclosed, preventing any comparison between the revenues declared by the government and the buyers' payments.
28 ***www.itie-congo.org/***; accessed 16.10.2014. To date, only the quarterly reports from 2013 are available; the volumes sold by the SNPC per quarter must therefore be added-up and converted into dollars (one part of the sales is accounted for in FCFA; the other in dollars). In a press release on 11.10.2014, the Congolese coalition of Publish What You Pay expressed concern over the fact that the process suffered from "significant drawbacks in 2014" and that "the report of activities from 2013 is still not available."
29 Natural Resource Governance Institute, Swissaid and the Berne Declaration, "Big Spenders: Swiss trading companies, African oil and the risks of opacity", 07.2014, p. 7.
30 ***http://eiti.org/files/Congo-Rep-2011-EITI-Report-2.pdf; https://eiti.org/report/republic-congo/2012*** , consulted 09.10.2014.
31 These figures are based on the 2013 quarterly reports. Cf. footnote 28.
32 Domestic demand was satisfied at 70% in 2012. China Daily, "SNPC plans more exploration campaigns", 28.06.2012. In this article, the Director-General of SNPC is interviewed.
33 Naphtha is a refined product used primarily by the petrochemicals industry.
34 US EIA, "Congo Brazzaville latest report", ***www.eia.gov/countries/cab.cfm?fips=cf;*** accessed 09.10.2014.
35 ***https://eiti.org/files/Congo-Rep-2011-EITI-Report-2.pdf***; p. 6, accessed 09.10.2014.
36 ***https://eiti.org/files/EITI%20REPORT%202012-CONGO%20B..pdf***; accessed 15.12.2014.
37 ***https://eiti.org/files/EITI%20REPORT%202012-CONGO%20B..pdf***; accessed 09.10.2014.
38 ***www.itie-congo.org/***; accessed 16.10.2014. These figures come from the conversion of the value of the barrels delivered to Coraf from FCFA into dollars.
39 Natural Resource Governance Institute, Swissaid and the Berne Declaration, "Big Spenders: Swiss trading companies, African oil and the risks of opacity", 07.2014, p.13.
40 Gunvor denies profusely any participation in the scheme, attributing it to an employee who has since been fired.
41 Gunvor Group Ltd, Preliminary Offering Circular, 10.05.2013, p.96 and ***www.paresources.se/en/Operations/West-Africa-region/The_Republic_of_Congo_Brazzaville/***; accessed 16.10.2014.
42 Puma International Financing SA, Preliminary Offering Memorandum, 17.01.2014, pp. 2, 32.
43 Puma International Financing SA, Preliminary Offering Memorandum, 17.01.2014, p.6.
44 Puma International Financing SA, Preliminary Offering Memorandum, 17.01.2014, p.157.
45 Puma International Financing SA, Preliminary Offering Memorandum, 17.01.2014, F-18 and F-138.
46 ***www.lynxenergy.com/wp-content/uploads/2012/11/brochure_lynx_fr.pdf***; accessed 16.10.2014.
47 ***www.lynxenergy.com/fr/nos-activites/investissement/x-oil/***; accessed 16.10.2014.
48 Interview, 01.10.2014, Philia's office.
49 Interview in the office of Maître Michel Bussard, Philia's lawyer, 28.10.2014.
50 Interview in the office of Maître Michel Bussard, Philia's lawyer, 28.10.2014.
51 Interview in the office of Maître Michel Bussard, Philia's lawyer, 28.10.2014.
52 Interview in the office of Maître Michel Bussard, Philia's lawyer, 28.10.2014.
53 ***www.verif.com/dirigeants/Jean-Philippe-AMVAME-NDONG-3778325/***; accessed 20.10.2014.
54 ***www.avenir-cotedazur.com/upload/avenir-2132-5-07-2013-bd.pdf***; accessed 20.10.2014.
55 Interview in the office of Maître Michel Bussard, Philia's lawyer, 28.10.2014.

56 Email, Maître Michel Bussard, 06.11.2014.
57 ***www.oandoplc.com/***; accessed 20.10.2014.
58 ***Africa Intelligence***, "SNPC: Sassou Jr place ses traders", No 661, 19.06.2013.
59 ***www.micpme.bj/gufe/publication-des-entreprises/cotonou/societes/703-publication-des-nouvelles-societes-de-cotonou-du-03-septembre-2013***; accessed 20.10.2014.
60 ***http://gufebenin.org/images/documents/060314.pdf***; accessed 20.10.2014
61 ***http://globaleyez.info/wp-content/uploads/SassouNguesso-DCVisit092011.pdf***; accessed 20.10.2014.
62 ***http://mitsloan.mit.edu/pdf/NewsAtMITSloan_Issue171.pdf***; accessed 20.10.2014.
63 Mr Moussa was also Founder and CEO of Kontinent LLC, a company based in Washington DC that acquires minority parts in Africa's oil, gas and mining sectors. Cf. ***http://kontinentllc.com/about-us.html***; accessed 20.10.2014.
64 We do not have the respective contracts but are in possession of the invoices.
65 These figures are given to provide a comparison. In reality, the proportion is not valid, as it mixes the crude oil ceded by SNPC to Coraf and Coraf's refined products that take on an added value.
66 We do not have the respective contracts but are in possession of the invoices. CITAC, an independent consultancy specialising in Africa's downstream oil sector, further mentions the fact that, in September 2013, Philia won a bidding round for a transaction of fuel oil from Sogara. Cf. CITAC, Sub-Saharan Africa Oil Market Report, September 2013, p. 22.
67 Email, Maître Michel Bussard, 06.11.2014.
68 These margins were calculated by subtracting 30% of the net margin Philia is obliged to cede to Coraf in virtue of Article 11 of the contract, titled "prime variable". We have no proof of these retrocessions but work on the assumption that they did indeed take place.
69 By "same conditions", we mean the same product, same quantity, same location and lifting date, and same INCOTERM (a standard designating whether it is the buyer or the seller who is charged with the costs, e.g. the freight costs), etc.
70 This statement refers only to the transactions that we are aware of, but we cannot rule out that others took place too. Philia chose not to respond to our questions on this in the interview on 28.10.2014 in the office of Maître Michel Bussard, Philia's lawyer.
71 Interview in the office of Maître Michel Bussard, Philia's lawyer, 28.10.2014.
72 Among AOT Trading AG's Board of Directors is a certain Martin Fasser. Fasser is also President of the Zug Commodity Association, an organisation that lobbies in the interest of commodity traders. In 2012, AOT distinguished itself as one of the few firms that delivered products to Bachar el-Assad's regime in Syria at the beginning of the civil war. Cf. ***www.reuters.com/article/2012/03/09/swiss-syria-sanctions-idUSL5E8E8A3H20120309***; accessed 16.10.2014.
73 This was in fact one transaction delivered in two shipments for logistical reasons, according to our sources. It resulted, therefore, in two sets of documents.
74 ***www.bbenergy.com/ourgroup.html***; accessed 15.10.2014.
75 We start from the assumption that this retrocession took place, although we do not retain any proof. We have applied the same reasoning to all the transactions. For their part, Philia's managers claim that "Philia paid Coraf a 30% cut of their gross profits on every transaction".
76 Talaveras also has an office in Switzerland – Tiveras Energy Services SA.
77 ***http://concordenergygroup.com/about-us/our-people/contacts/***; accessed 15.10.2014.
78 Petroleum Revenue Special Task Force, Final Report, 11.2012, p.53; Christina Katsouris and Aaron Sayne, "Nigeria's Criminal Crude: International Options to Combat the Export of Stolen Oil", Chatham House, 09.2013, p.23.
79 N.B. The deal could nonetheless have changed during 2014. In January and February 2014, Philia won the calls for tender to lift two shipments in Senegal. At the beginning of the year, Philia chartered a vessel in Pointe-Noire. On its way back up the coast, the firm decided to profit from its semi-loaded ship already present in the region by playing with the freight cost and cashing in the contract in Senegal. Philia was able to kill two birds with one stone by proposing the Senegalese refinery a significantly higher buying price than its competitors,

therefore winning the contract. Cf. CITAC, Sub-Saharan Africa Oil Market Report, 01.2014, p.19 and CITAC, Sub-Saharan Africa Oil Market Report, 01.2014, p.17.

80 Interview in the office of Maître Michel Bussard, Philia's lawyer, 28.10.2014.

81 Catherine Jago and Liz Bossley, "Trading Refined Oil Products. The Consilience Guide", Consilience Energy Advisory Group Ltd, p.137.

82 Atmospheric residue is part of the residue resulting from the atmospheric distillation of crude oil during the refinery process.

83 According to our research, BNP Paribas (Switzerland) SA has ceased all business relations with Philia. When questioned on this, Mr Okoli judged our question to be "absurd" and proof of an "ignorance" of the industry. He further argued that BNP Paribas had recently drastically diminished its trade finance activities; in fact affirming, therefore, that BNP Paribas did indeed cease financing Philia.

84 Interview with Michel Bussard and Ikenna Okoli, 03.06.2014.

85 On contacting Coraf, we asked to speak directly with both Mr Makaya and Denis Christel Sassou Nguesso. However, this is a request that remains dead letter.

86 Catherine Jago and Liz Bossley, "Trading Refined Oil Products. The Consilience Guide", Consilience Energy Advisory Group Ltd, p.138. A letter of credit is definitive insofar as the transaction cannot take place without ensuring that the buyer's bank does not block the outgoing sum, which is automatically transferred to the seller's account once the shipment is delivered. Incidentally, Philia demands that its counterparties purchasing the goods sold on f from Coraf pay by letter of credit: "We are more at ease with a confirmed letter of credit", writes Philia, during discussions on its fuel oil re-sales to AOT Trading SA.

87 Catherine Jago and Liz Bossley, "Trading Refined Oil Products. The Consilience Guide", Consilience Energy Advisory Group Ltd, p.141.

88 For example, it was via this regulation that Clariden Leu from Credit Suisse, having analysed the commissions Gunvor paid connected to its contract to export Congolese crude, denounced the company on suspicion of money laundering.

89 Philia won contracts in Gabon and Senegal after the contract won in Congo.

90 Annual Report 2013, BGFIBank Group, p. 7.

91 The BGFI has branches in a number of Central African countries. In Cameroon and Equatorial Guinea, the state is a direct shareholder. Cf. Annual Report 2013, BGFI Banking Group. In Equatorial Guinea, Melchor Esono Edjo held shares in the bank under private title, though he was at the time Minister of Finance, according to Africa Confidential. Cf. Africa Confidential, "L'Etat, c'est nous", Vol. 54, No 14, 05.07.2013. Mr Esono Edjo still heads up the BGFIBank's Board of Directors in Equatorial Guinea to this day. Cf. Annual Report 2013, BGFI Banking Group, p. 16.

92 ***https://www.beac.int/download/cng.bgfi.pdf***. The document (accessed 09.10.2014) explains the bank's situation in 2011. It does not give the first name of "Mme Bongo Ondimba"; however, it is in all likelihood Pascaline Mferri Bongo Ondimba, the sister of the Gabonese President, Ali Bongo Ondimba. Cf. footnote 89.

93 ***https://www.bgfi.com/sites/default/files/PDF/bgfiweb_netisse_eu/rapport_annuel_groupe_bgfibank_2013.pdf***; accessed 22.10.2014.

94 ***https://www.bgfi.com/sites/default/files/PDF/bgfiweb_netisse_eu/rapport_annuel_groupe_bgfibank_2013.pdf***; accessed 22.10.2014.

95 Just as all the other members of his party (UMP), Nicolas Sarkozy entertains good relations with the Republic of the Congo. In July, the ex-French President even travelled to Brazzaville to hold a conference (for a generous sum) during the forum organised by ***Forbes Afrique***, Lucien Ebata's publication referred to above. See: Fabrice Arfi and Marine Turchi, "Sarkozy au Congo: les dessous d'une conférence embarrassante", ***Mediapart***, 27.07.2014 and Marine Turchi, "Les mystérieux voyages de l'UMP au Congo", ***Mediapart***, 27.07.2014.

96 Jean-Dominique Okemba participates along these lines in the Treasury Committee, an organisation managed by the President himself that reunites a number of Senior Civil Servants and Ministers. Among these is Jean-Jacques Bouya, Minister for Public Works, listed as one of the beneficiaries of the network of offshore companies unravelled in the context

of the “Biens mal acquis” affair. On the Treasury Committee: ***La Lettre du Continent***, “Denis Gokana, l’influent monsieur pétrole de Denis Sassou Nguesso”, 26.09.2014.

97 Fabrice Arfi, “A Paris, le shopping de la corruption du clan Sassou Nguesso”, ***Mediapart,*** 23.10.2013.

98 ***https://www.bgfi.com/sites/default/files/PDF/bgfiweb_netisse_eu/bgfi-40-ans.pdf***; accessed 20.10.2014.

99 Interview in the office of Maître Michel Bussard, Philia’s lawyer, 28.10.2014.

100 ***https://eiti.org/Congo;*** accessed 06.01.2015.

101 ***https://eiti.org/files/Republic%20of%20Congo%202007-2008-2009%20EITI%20Report_1.pdf***; accessed 30.10.2014.

102 Interview in the office of Maître Michel Bussard, Philia’s lawyer, 28.10.2014.

103 ***https://eiti.org/files/Republic%20of%20Congo%202007-2008-2009%20EITI%20Report_1.pdf***; accessed 30.10.2014.

104 Interview in the office of Maître Michel Bussard, Philia’s lawyer, 28.10.2014.

105 Meeting in Maître Michel Bussard’s office, 02.12.2014.

106 ***Le Temps,*** “Sociétés de négoce et élites politiques : les relations troubles de la Suisse”, Marc Guéniat and Olivier Longchamp, 02.04.2014.

107 ***http://medienundzeit.at/wp-content/uploads/2014/04/mz-12014-Monika-Roth-Compliance-der-Rohstoff-von-Corporate-Social-Responsibility-S.22-33.pdf***; accessed 01.12.2014. The text was translated into English by the Berne Declaration.

108 Email on 02.12.2014.

109 Email on 04.11.2014.

110 ***www.ejpd.admin.ch/dam/data/bj/aktuell/news/2014/2014-06-25/ber-f.pdf***; accessed 01.12.2014.

111 ***www.ejpd.admin.ch/dam/data/bj/wirtschaft/gesetzgebung/aktienrechtsrevision14/vorentw-f.pdf***; accessed 01.12.2014.

112 ***www.publishwhatyoupay.org/about/advocacy/contract-transparency***; accessed 08.01.2014.

113 ***https://eiti.org/fr/news/trafigura-divulguera-ses-paiements-aux-gouvernements-pour-l-achat-de-p-trole***; accessed 01.12.2014.

114 Natural Resource Governance Institute, Swissaid and the Berne Declaration, “Big Spenders: Swiss trading companies, African oil and the risks of opacity”, July 2014.

115 The Wolfsberg Group, The Wolfsberg Trade Finance Principles, January 2009, p.16.

Berne Declaration
Déclaration de Berne
Erklärung von Bern

This report presents the findings of an investigation led by the Berne Declaration (BD) into the business relations between Philia, a Geneva-based trading company, and Coraf, the Republic of the Congo's state-owned oil refinery. Drawing from an exclusive set of source documents, we show how Philia has benefitted from abnormally favourable clauses detailed in its «term contract to export fuel oil» with Coraf. This contract, granted without a public tender process, was signed by the Congolese President's son, Denis Christel Sassou Nguesso - a notoriously corrupt figure. The stakes are huge for the Congolese population: oil is the primary source of national revenue for Congo, a country plagued by the resource curse.

Berne Declaration

The Berne Declaration (BD) is a non-profit, independent Swiss organization with around 25,000 members. The BD has been campaigning for more equitable relations between Switzerland and underprivileged countries for more than forty years. Among its most important concerns are the global safeguarding of human rights, the socially and ecologically responsible conduct of business enterprises and the promotion of fair economic relations.

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