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EXECUTIVE SUMMARY

PHILIA'S REFINED VENTURES IN BRAZZAVILLE

HOW SWISS TRADERS MISAPPROPRIATE CONGOLESE OIL RENTS

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:** 154th 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

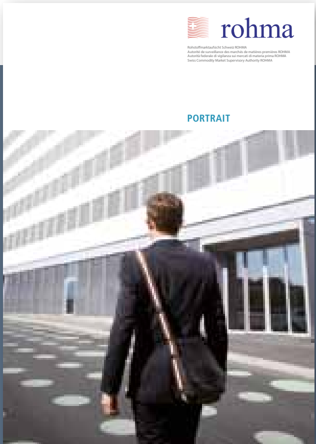
Philia’s managers have not denied the existence of relations between its sole shareholder and the Congolese President’s son, neither has it been able to prove that these relations had no effect on its acquisition of the contract and its so very favourable clauses. We can only hope that the publication 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).**

Reference
Philia’s refined ventures in Brazzaville – How Swiss traders misappropriate Congolese oil rents, Berne Declaration, February 2015. The full version of this report and executive summary is also available at *www.bernedeclaration.ch* and in French at *www.ladb.ch*. The executive summary is available in German at www.evb.ch.