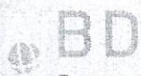


# Big Spenders

Swiss trading companies,  
African oil and the risks  
of opacity

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# Executive summary

The sale of crude oil by governments and their national oil companies (NOCs) is one of the least scrutinized aspects of oil sector governance. This report is the first detailed examination of those sales, and focuses on the top ten oil exporting countries in sub-Saharan Africa. From 2011 to 2013, the governments of these countries sold over 2.3 billion barrels of oil. These sales, worth more than \$250 billion, equal a staggering 56 percent of their combined government revenues.

Swiss commodity trading companies buy a considerable share of the oil sold by African governments. The payments made by Swiss companies generate a significant portion of public revenues in some of the world's poorest countries, and are subject to governance risks as they take place in environments of weak institutions and widespread corruption. To date, however, these important transactions have escaped oversight due to opaque corporate practices and weak regulation.

With the aim of shedding light in this historically dark area, we gathered information on 1,500 individual oil sales made by NOCs in sub-Saharan Africa in the 2011–2013 period. While this sample represents a large majority of the total, the secrecy that prevails in this part of the oil sector prevented us from gathering comprehensive data, and the caveats to our findings are explained in the full text of the report. Nonetheless, the available data leaves no doubt about the vast scale of purchases by Swiss traders. The findings indicate:

- Of the 1,500 individual sales we identified, Switzerland-based companies purchased a quarter of the volumes sold by African NOCs, buying over 500 million barrels worth around \$55 billion.
- The amounts paid by Swiss traders to the ten African governments equal 12 percent of the governments' revenues, and are double what they received in foreign aid.
- Swiss trading companies were the largest buyers of oil from the governments of Cameroon, Chad, Equatorial Guinea, Gabon and Nigeria.
- Glencore bought 100 percent of the oil sold by Chad's government, and made payments that we estimate were equal to 16 percent of total government revenue in 2013.
- Swiss traders Arcadia, Glencore, Trafigura and Vitol bought oil worth a total of \$2.2 billion from the government of Equatorial Guinea in 2012—payments equivalent to 36 percent of government revenue.
- In Nigeria, Swiss companies bought oil worth \$37 billion over the three years, an amount equal to more than 18 percent of the national government's revenues.

Payments of this scale that affect the development prospects of poor countries require public oversight, which has been largely missing in most of the scenarios described in this report. Transparency provides citizens with a tool to hold their government to account for the management of their country's most valuable asset. To achieve transparency, we recommend the following:

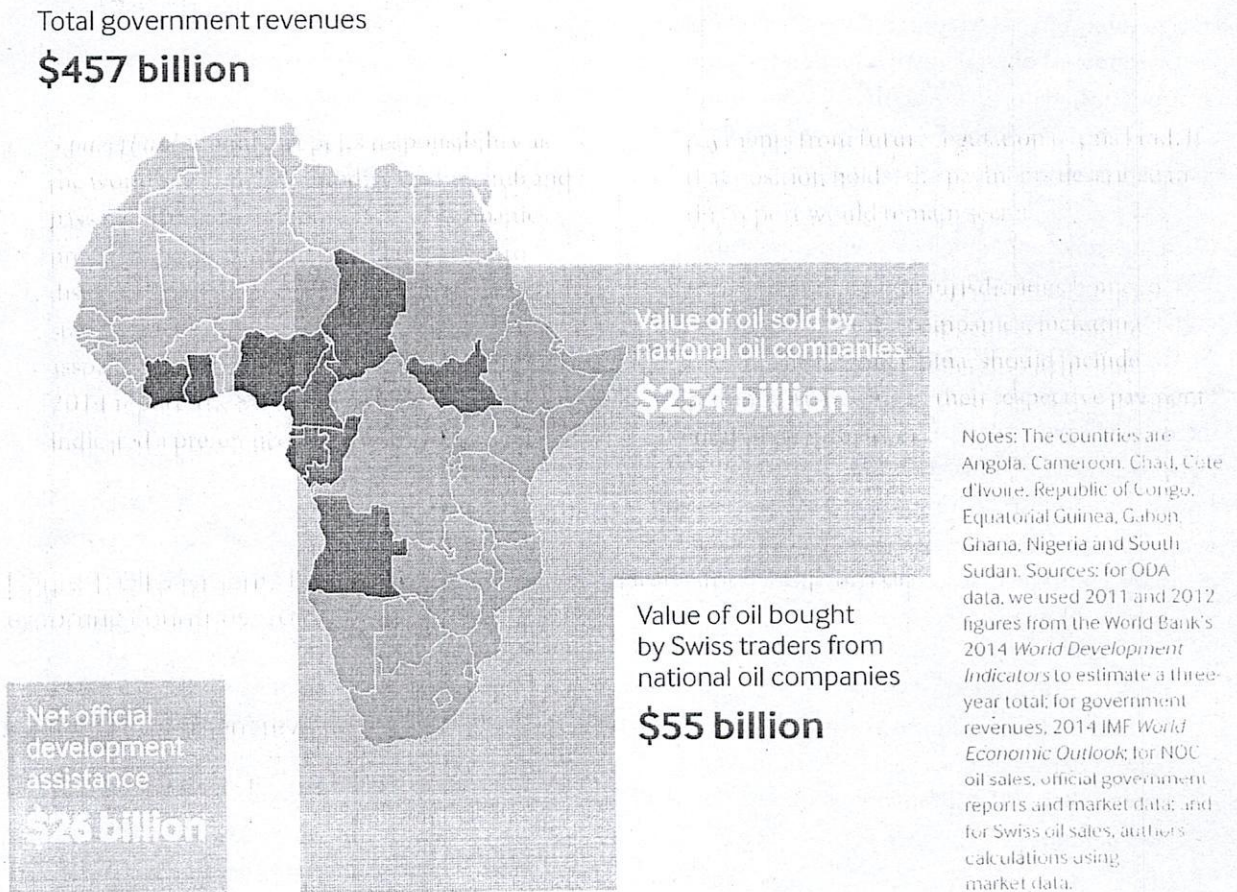
- *Oil-producing governments and NOCs* should adopt rules and practices that encourage integrity in the selection of buyers and determination of the selling price, including detailed public disclosures on how the state's share of production is allocated and sold.

- *Switzerland* should accept its responsibility as the world's leading commodity trading hub and pass regulation that requires Swiss companies producing or trading in natural resources to disclose all payments made to governments and state-owned companies, including payments associated with trading activities. In a 25 June 2014 report, the Swiss federal government indicated a preference to exclude trading-related

payments from future regulation of this kind. If that position holds, the payments described in this report would remain secret.

- *Other governments* of jurisdictions home to commodity trading companies, including the EU, the US and China, should include commodity trading in their respective payment disclosure regulations.

Figure 1: Oil payments by Swiss traders to sub-Saharan Africa's top-ten oil exporting countries, 2011–2013



# Recommendations for improving oil sale accountability

For oil wealth to generate development gains, progress is required on many fronts, both in producing countries and in the countries where commodity companies are based, such as Switzerland. This ambitious agenda includes addressing issues ranging from tax regimes, market price integrity and controls of corruption and illicit financial flows, to democratic accountability and community rights, among others beyond the scope of this paper. In our recommendations, we focus on transparency, which is a basic, practical and concrete tool for generating better outcomes. The public scrutiny of oil deals can discourage costly manipulations and leakages, and motivate the more accountable use of the revenues collected.

Drawing on the findings of this report as well as previous research on the topic, we recommend the following:

## FOR OIL PRODUCING GOVERNMENTS AND NATIONAL OIL COMPANIES

Oil-producing countries should take steps to protect the integrity of the processes through which they sell their oil, as with other high-value transactions. At its most basic level, this requires succeeding at three main tasks: 1) selecting buyers through a method that reduces opportunities for favoritism, bribery and manipulation; 2) attracting the best possible return for the oil in question, as losses of just pennies per barrel can add up to significant revenue shortfalls; 3) collecting and transferring the revenues to the treasury through a rule-based process that reflects clear national priorities. Accomplishing these objectives requires strong policies, the effective implementation of these policies by well-capacitated agents of the government (particularly the NOCs), and effective oversight by government and non-governmental bodies.

Progress in achieving these tasks involves tackling some complex decisions: whether to sell to traders or end-users; what kind of sales mechanism will generate the best price; how much of sale proceeds should the NOC keep to finance its own operations; and so on. But the decision to be transparent should be easy. Illustrating its feasibility, the governments of Ghana, Yemen and Iraq already disclose some information on their oil sales. However, this kind of reporting remains the exception.

Specifically, both governments and NOCs should systematically disclose detailed accounting on the volume of the state's share of production, and how all of it is used. Reporting should address all sales to foreign and domestic buyers, and include:

- the name, beneficial owner and country of incorporation of the buying company
- the volume, grade, and date of any sale, broken down by cargo where appropriate
- the price, and how it was determined
- the revenue received for each cargo, and the destination of that revenue (e.g., used by NOC to purchase fuel, transferred to national budget, transferred to a local government)
- a full explanation of the process for choosing the buyer (e.g., the allocation of a term contract, an open tender)
- the full text of the related contract (e.g., term contract, agreement to swap crude for refined products).

The data should cover sales to all buyers as well as transfers to other state-owned enterprises like refineries. Although we focus on export sales in this report, the domestic use of oil by NOCs can be even more opaque. Reporting should extend to sales made by any company, subsidiary or joint venture where the state is an owner. When buying companies pay

for crude in kind—by supplying petroleum products for instance—or receive commodities as part of loan repayment arrangements, the government and NOC should report details of this arrangement as well.

Implementing the Extractive Industries Transparency Initiative (EITI) can help to initiate this kind of reporting. Requirement 4.1(c) of the 2013 EITI Standard obliges implementing countries to disclose the volume sold and the revenue received for any “material” sale of the state’s share of production or other revenues collected in kind.<sup>50</sup> While commendable and an improvement over the *status quo ante*, this advance falls short in three ways. First, the rule is vague on the level of detail it requires, saying: “Reporting could also break down disclosures by the type of product, price, market and sale volume.” Second, the EITI encourages but does not require the reconciliation of oil sale payments. For other payments, such as taxes or royalties, both the paying company and the receiving government agency must report on the transaction, thus enabling comparison of the two sides. This is generally a core feature of the EITI approach, and oil sales deserve the same treatment. Third, many countries (e.g. Angola, South Sudan) do not implement the EITI, or have been ejected for failing to meet its minimum standards (i.e., Equatorial Guinea and Gabon). We strongly advise producing countries to sign up to the EITI, and participating countries to disclose a fully detailed reconciliation of all NOC oil sales. However, the EITI does not reduce the need for action by the buying companies, NOCS, or countries like Switzerland, where buyers are domiciled.

## FOR THE SWISS GOVERNMENT

Switzerland is a regulatory haven for commodity traders. As Jean-Luc Epars, head of regulatory services at KMPG Geneva put it: “The situation so far is very easy – no regulation, no supervision.”<sup>51</sup> The UK’s Financial Conduct Authority, in charge of supervising the financial markets, raised concerns about the lack of regulation of commodity traders globally, saying “These firms are playing an increasingly critical role in the functioning of an ever more complex global market.”<sup>52</sup> Given the importance of payments by Swiss trading houses to Africa’s oil revenues, this situation must change.

Switzerland, as the world’s leading commodity trading hub, should take reasonable steps to prevent its commodity trading sector from helping to perpetuate the resource curse. Specifically, the government should pass regulation that requires Swiss companies producing or trading in natural resources to disclose all payments they make to governments and state-owned companies, whether associated with exploration, production or trading activities. Such a law would echo the regulations adopted in the US and the EU, which have targeted payments stemming from exploration and production activities, while also reflecting the reality that the Swiss commodity sector is overwhelmingly dominated by trading houses.<sup>53</sup> In a discouraging development, on 25 June 2014 the Swiss Federal Council stated that it was considering proposing

50 EITI International Secretariat. “The EITI Standard.” (11 July 2013). [http://eiti.org/files/English\\_EITI%20STANDARD\\_11July\\_0.pdf](http://eiti.org/files/English_EITI%20STANDARD_11July_0.pdf).

51 Quote from the Financial Times Global Commodity Summit 2013, Lausanne, 16 April 2014.

52 Tatyana Shumski and Sarah Kent, “Big Commodity Traders Gain Clout,” *Wall Street Journal* (9 July 2014), <http://online.wsj.com/article/big-commodity-traders-gain-clout-1404933074>.

53 The US, through Section 1504 of the Dodd-Frank Act, and the EU, through the Transparency Directive and the Accounting Directive, have in the past two years adopted mandatory rules of payment disclosure, compelling their extractive sectors to disclose all payments made to governments. The US has included the notion of export in the law, but it is unclear whether this would include NOC sales. More information: Berne Declaration. “Frequently asked questions on the transparency of payments in the commodities sector,” 26 June 2014. [http://www.bernedecoration.ch/fileadmin/files/documents/Rohstoffe/140624\\_Q\\_A\\_Payment-Disclosure-including-Trading\\_EN.pdf](http://www.bernedecoration.ch/fileadmin/files/documents/Rohstoffe/140624_Q_A_Payment-Disclosure-including-Trading_EN.pdf).

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legislation that would actually *exempt* the reporting on trading-related payments by Swiss companies.<sup>54</sup> The Geneva Trading and Shipping Association welcomed this statement, following its intense lobbying against any new required reporting by its trading company members.<sup>55</sup> A law with such an exemption would effectively endorse the continued secrecy of payments that materially affect the financial well-being of many African countries and consequently the human development of their citizens.

To be effective, Swiss transparency regulation must require companies to disclose the following for all transactions with foreign governments and state-owned companies:

- the name and beneficial owners of the company
- the name of the selling entity
- volume, grade, and date of each individual purchase
- the respective payments made for each individual purchase
- the related contracts (e.g., term contract, agreements for trading crude for petroleum products)
- the way the purchase was secured (e.g., public tender, applied for term contract), including additional aspects of the agreement such as loans or infrastructure promised in exchange for lifting rights
- the same information for any payments made by the company's subsidiaries or by joint ventures in which it holds significant shares.

The Swiss government should also consider what complementary measures it may need to prevent the easy circumvention of any reporting requirements, such as a Swiss company inserting a middleman buyer between itself and the state-owned company. Legislation that requires companies to perform a thorough due diligence before entering into business with a company, whether government-owned or not, would help in this regard. Such "know your business partner" practices could also guard against commodity traders buying illicit commodities and doing business with politically exposed persons in a manner that threatens the public interest.

In the meantime, as we await regulatory reform, individual companies can begin now by publicly disclosing this data as part of their regular reporting. For instance, the exploration company Tullow Oil chose to comply with the EU regulations before they came into force, and provided detailed payment data in its 2013 annual report.<sup>56</sup> Trading companies could follow suit.

## AND BEYOND

Further action is needed beyond the initial, urgent steps described above. Along with Swiss traders, our research showed that a wide range of companies buy oil from African governments including the major international oil companies based in North America and Europe (e.g., BP, Shell, Total, Chevron); refining companies from around the world; traders based in places like the US, Singapore and Dubai; and state-owned companies such as the Chinese giants Sinopec

54 Berne Declaration and SwissAid, "Transparency in commodities: the Federal Council's schizophrenic proposal," (25 June 2014), [http://www.bernedeclaration.ch/media/press-release/transparency\\_in\\_commodities\\_the\\_federal\\_councils\\_schizophrenic\\_proposal/](http://www.bernedeclaration.ch/media/press-release/transparency_in_commodities_the_federal_councils_schizophrenic_proposal/)

55 Stéphane Graber, "La démarche très utile et surtout constructive", *L'AGEFI* (27 June 2014), <http://www.agefi.com/une/detail/archive/2014/june/artikel/matieres-premieres-le-rapport-adopte-par-le-conseil-federal-va-dans-le-bon-sens.html>.

56 Tullow Oil, "Transparency Review," <http://www.tullowoil.com/index.asp?pageid=573>.

and ChinaOil. The payments made by all of these companies require disclosure, which warrants action by multiple jurisdiction of domicile. This includes the US and the EU whose current mandatory reporting laws do not explicitly address trading.

To generate demand for these reforms, international civil society and international financial institutions like the World Bank and IMF should devote greater attention to NOC transactions. Within producing

countries, proactive oversight of oil sales and other NOC activities by parliamentarians, journalists and activists will encourage decision-makers to act in the public interest. However, transparency by all parties involved is essential so that citizens, governments and other entities can have an informed conversation about NOC crude sales and their impact on the long-term national interest of resource-rich developing countries.