PUBLISH WHAT YOU PAY

PWYP Congo Brazzaville: Scrutinizing SNPC's commodity trading activities

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The Sale of State Oil in the Republic of the Congo: Improving Transparency

Introduction: The SNPC in Congo-Brazzaville

State-owned companies are key actors in the management of extractive resources in many producing countries, especially when their mission is to sell the State's share of oil. In many cases, however, these structures are very much influenced by the political game and do not operate transparently with regard to such factors as selling price, income received, costs incurred and the buying companies' identity. The State's share of oil is thus often sold under conditions that are not well governed or accountable to citizens.

In the Republic of the Congo (Congo-Brazzaville), the National Petroleum Company (Société Nationale des Pétroles du Congo – SNPC) is responsible for the sale of the State's share of oil, which accounts for 90% of the public revenue derived from the extractive industries.[1] However, as is often the case in resource-rich countries, and as evidenced by investigations into the transparency of State oil sales in the Congo, civil society continues to struggle to obtain official information about the SNPC's activities and to ensure that the Congolese State is acting in the common interest.[2]

The SNPC's role in selling the State's oil share to trading companies and remitting the proceeds to the State Treasury and to an account at the Export-Import Bank of China is illustrated in Figure 1.

This study was done in 2017

1 2014 EITI report

2 Global Witness, "L'énigme du Sphynx: qu'est-il advenu de l'argent du pétrole congolais?" (The enigma of the Sphynx: what happened to Congolese oil money), December 2005, http://osibouake.org/IMG/pdf/L_enigme_du_Sphynx.pdf; La Voix du Peuple, "Gunvor au Congo: pétrole, cash et détournements: les aventures d'un négociant suisse à Brazzaville" (Gunvor in the Congo: oil, cash and embezzlement: the adventures of a Swiss merchant in Brazzaville), September 2017.

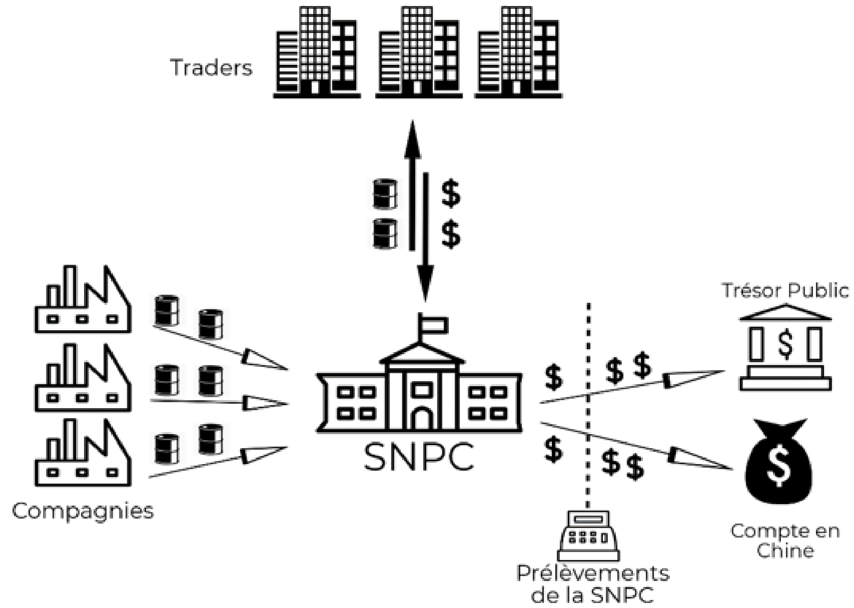

Figure 1 The SNPC as seller of the State's oil share (PWYP-Congo)

Project aims and approach

To clarify what is needed to increase the transparency of State oil sales in Congo-Brazzaville, Publish What You Pay Congo (PWYP Congo) set out to investigate the extent to which answers to three specific questions are publicly available:

- How much does the sale of the State's share of its oil bring to the Congolese budget?
- Is the State oil sold at a good price – that is, do citizens receive a fair price for their country's oil?
- Which companies buy the oil – and is the information necessary to spot any potential conflict of interest risk available?

PWYP Congo's approach was to assess the published data to demonstrate what information is available and what is missing to answer these questions, and thereby to show what more is needed to make SNPC more accountable to the Congo's citizens for its oil sales.

Sources of information and information gaps

The most recent public information on the Congo's State oil sales is available in the country's Extractive Industries Transparency Initiative (EITI) reports (2015 being the last reported year)[3] and in certification reports of oil receipts[4] (published for years 2009 to 2013, with only 2011 and 2013 data being complete and exploitable.)

EITI reports, published on an annual basis since 2010, are the main source of information for civil society regarding oil management in the Congo. But PWYP Congo's analysis highlighted significant shortcomings regarding the national oil company. Some data on the role of the SNPC and the legal framework of its activity are presented, as well as the number of barrels sold as the State's share of oil for the reported year, the revenues transferred by the SNPC to the State, and the allocation of the proceeds in direct or indirect[5] contributions to the State budget. However, the barrel price obtained by the SNPC cannot be deduced from this information, as the transfer from the national company to the State only occurs after the SNPC has retained an unspecified amount of fees. The EITI reports only mention a 1,6% marketing fee, which is far from the actual volume of retained fees (more explanation below). This information is useful, but incomplete, and far from up to date. Moreover, only data from 2011 and 2013 can be compared with the certification reports described below, which are incomplete or missing for the other years. The data cannot be corroborated from other sources, because the SNPC does not carry out any public reporting, despite the fact that EITI reports state that the SNPC is supposed to report to ministries every month to show the State share of oil is sold at market value.[6] In addition, the EITI reports do not provide information on the identity of the traders that buy the oil, or the selling price. Nor do the reports indicate how far the SNPC complies with its legal reporting obligations mentioned above.

3 https://eiti.org/republic-of-congo#eiti-reports-and-other-key-documents
4 http://www.itie-congo.org/index.php/2015-12-18-10-43-14/rapport-kpmg
5 Indirect contributions are earmarked proceeds routed to the bank account in China – see explanations below.
6 2014 EITI report, p.37

PWYP Congo compared the EITI information with KPMG's quarterly certification reports on the Congo's oil receipts, mainly for 2013 (the most recent and complete data exploitable). These reports were published at the behest of the government from 2009 to 2013[7], but were discontinued since. They trace SNPC's transfers to the Congolese Treasury from sales proceeds from the State's oil share. Each report compiles, for each sale: the date, the quality of crude sold, the volume, the price per barrel, the exchange rate used, the income from the sale, and the corresponding amount transferred to the Treasury after deduction of fees by the SNPC, and the amount and categories of the retained fees.

In addition, both sources include information, though incomplete, on sales income directed to an account at the Export-Import Bank of China. The Congo and China have signed loan agreements for the construction of infrastructure whose conditions relating to interest rates, repayment schedules, use of funds, etc. remain very opaque. EITI reports show however, that income from the sale of an unspecified amount of oil must be deposited directly into the Export-Import Bank as a money-back guarantee.[8] According to the EITI reports, 35% of the State's oil share was sold to supply the Chinese bank account in 2013, 26% in 2015 (figure 2). agreements (cf following points).

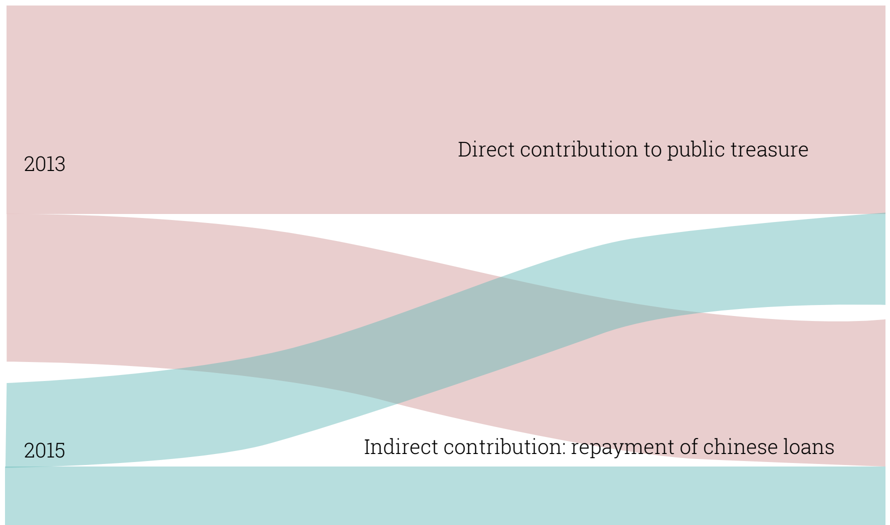

Figure 2: Allocation of sales income from the State's share

7 As explained above, not all quarterly reports are available for these years.
8 See for example 2015 EITI report, p.109: definition of flux 8

Main findings

Finding 1. As noted above, the Congo's EITI reports provide data on the volume of sales, the amount transferred by SNPC to the State, but fails to mention the amount of fees retained by SNPC, or the actual selling prices obtained by the SNPC. In addition, the latest EITI data is three years old.

Finding 2. PWYP – Congo's analysis of KPMG's quarterly reports on oil receipts, focused on 2013, showed that the sales price the SNPC obtained in 2013 was systematically lower than the average price obtained by private sector oil operators for their oil sales[9] (by around 2,9 USD), and that the price of barrels sold to supply the Chinese account was on average higher but remained lower than that obtained by private operators (Figure 2). No official justification is advanced in the published reports as to the differences in the selling prices.

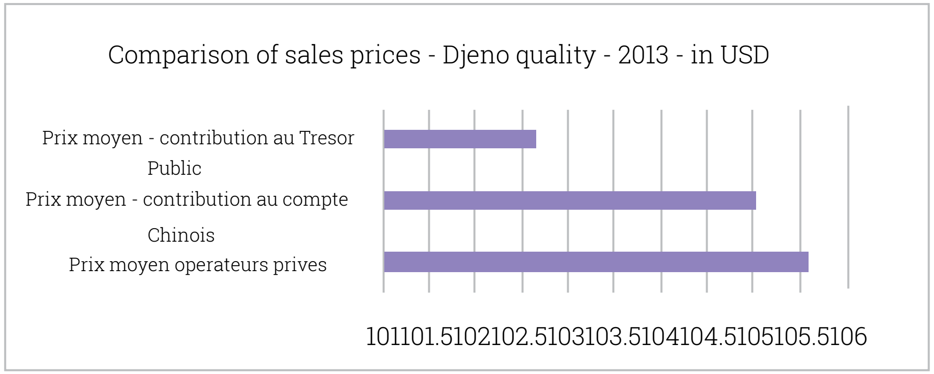

Figure 3 Comparison of oil sales prices obtained the Congolese State and by private operators (USD per barrel)

Finding 3. PWYP – Congo's analysis of KPMG's reports on oil sales also show that in 2013, 18% of sales proceeds destined to contribute directly to the State budget were retained by the SNPC as a cost. It seems that the proportion was much lower in 2011 and 2012.[10] No explanation is provided to justify this large and sudden increase in cost allocations, and what they actually cover, while EITI reports only mention a 1,6% marketing fee.

"Various charges linked to crude marketing and transportation" are also mentioned, without further explanation or number. Moreover, in 2013 deductions on the proceeds of sales destined for the Chinese account were lower. In general, the contextual information on the cost deductions made by the SNPC is insufficient (Figure 4).

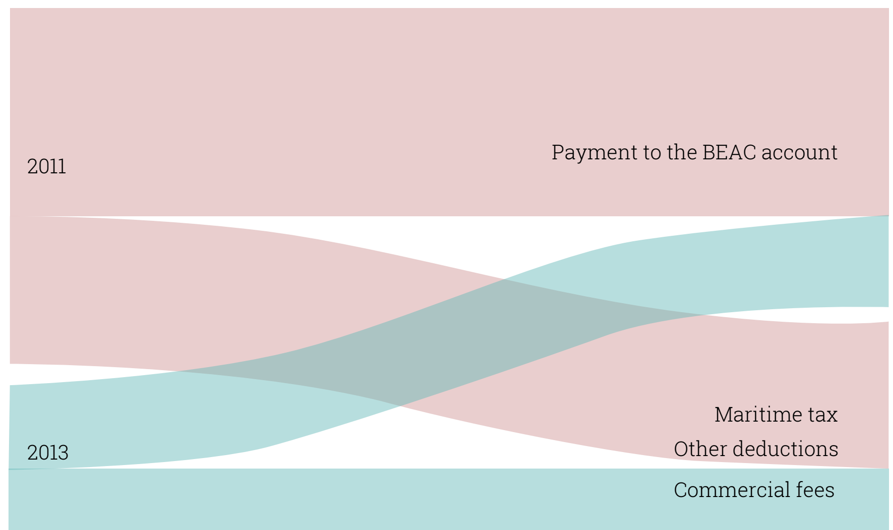

Figure 4 Destination of the of oil sales income from the Congolese State's share intended to contribute directly to the Treasury, showing deductions

Finding 4. No information is published about the SNPC's trading partners, the buying companies. This makes it impossible to detect or discount potential conflicts of interest.

Finding 6. Some disparities were observed between the two data sources, in terms of volume of barrels sold, and revenues transferred to the State. The lag in the periods studied for example) could partially explain the discrepancies, but more information is needed.

9 The reference used for the private sector oil operators' average price was the "fiscal price": operators are asked to disclose their average selling price every semester to be included in the calculation of taxes and fees.
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the oil is sold at a good price, and which companies buy the oil. The study has shown that transparency and public accountability are lacking in the Congo in relation to all three of the research questions. The available data is both limited and out of date, and since 2014 has been accessible via only one source, the EITI, with no additional means of corroboration. The data on sales, costs and revenue allocation, and the lack of transparency about buying companies, raise serious questions about the Congolese State's capacity – or political will – to obtain a fair sales price per barrel for its oil share, or to control the SNPC's operating costs, or to prevent conflicts of interest affecting State oil sales, or to explain to citizens the proportion of revenues allocated as a guarantee in return for Chinese loans, or to ensure the commercial effectiveness of the SNPC.

To improve the accountability and governance of its extractive sector, the Congolese Government should:

1. Publish each EITI report no later than one year after the close of the fiscal year covered–in keeping with best EITI practice, no later than one year.
2. Include in each EITI report the volumes sold and revenues received for the State's share of oil (before SNPC's fees collection), disaggregated by individual buying company and by type of product and price[11], as well as the fees retained by SNPC.
3. Ensure that the SNPC fully complies with its legal requirements to report every month to the Finance and Oil ministers that it is selling the State's share of oil at market price.
4. Resume the publication of quarterly certification reports on the State's oil sales and receipts, and/or publish equivalent quarterly information elsewhere, to enable Congolese civil society to monitor State oil sales and revenues in real time and for comparison and corroboration with EITI data.

Internationally, this study supports civil society's calls for greater transparency in commodities trading. In addition to the EITI requirements, the transparency movement now seeks laws to require oil, gas and mineral trading companies to publish information about their purchases from State-owned enterprises, in line with recent voluntary commitments by Trafigura and Gunvor.[12] For Congolese civil society, such mandatory reporting would make it possible to compare the data published in the Congo with public disclosures in other jurisdictions. To be effective, transparency relies on the publication of credible data, which can best be guaranteed by a multiplicity of matching sources.

11 The reference used for the private sector oil operators' average price was the "fiscal price": operators are asked to disclose their average selling price every semester to be included in the calculation of taxes and fees.

12 v Natural Resource Governance Institute, "Deterring corruption and improving commodities trading transparency", January 2018, https://resourcegovernance.org/events/discussion/natural-resources-deterring-corruption-and-improving-commodities-trading; EITI, "Gunvor becomes the second commodities trading house to support EITI", April 2018, https://eiti.org/news/gunvor-becomes-second-commodities-trading-house-to-support-eiti