



BERNE DECLARATION

A SUPERVISORY
AUTHORITY TO COMBAT
THE REGULATORY
LACUNA IN THE
COMMODITIES SECTOR

HOW THE RESOURCE CURSE IS CONNECTED TO
THE SWISS TRADING HUB
AND THE POLITICAL RESPONSIBILITY THAT RESULTS.

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“Africa is standing on the edge of enormous opportunity. Will we invest our natural resource revenue in people, generating jobs and opportunities for millions in present and future generations? Or will we squander this opportunity, allowing jobless growth and inequality to take root?”¹

Kofi Annan, former Secretary-General for the UN and Chair of the Africa Progress Panel

1// INTRODUCTION

Switzerland is the world’s most important commodity trading hub. Swiss trading companies are now becoming increasingly active in oil production, or mining, as well as in the more traditional trading of, for example, crude oil products. Many of the problems in the sector, acknowledged by the Swiss government in its “Background Report: Commodities”², have a direct connection to the resource curse phenomenon: the fact that the populations of commodity-rich developing countries suffer rather than profit from these riches as a result of increasing corruption, growing inequality and conflict. Overcoming or at least reducing the resource curse is a central task for those working in development – as it is for Switzerland.

Internationally, there is a strong trend towards transparency in the commodities sector. This is evident, for example, from the increasing number of country members in the “Extractive Industries Transparency Initiative” (EITI). In addition, more and more home States of commodity companies (including the USA, EU, Norway and Hong Kong) are requiring companies to disclose their payments to governments, wherever they do business. These laws are a necessary addition, since it is often only the particularly corrupt producer countries that do not want to be members of EITI.

While transparency is a necessary step in the fight against the resource curse, it is, however, only a first step and is by no means sufficient. Particularly in Switzerland, where commodity traders are often active in highly problematic countries. The Swiss commodity industry contributes to the resource curse through its overwhelming significance and the sheer volume of business conducted. And it does nothing to reduce the resource curse as several examples in this paper will show. This is why the Berne Declaration believes that Switzerland, as the country in which these companies are headquartered, has a political responsibility to push for concrete measures that go

beyond the recommendations set out in the government’s “Background Report: Commodities”. Due to the absence of regulation or rather, the lack of effectiveness of the little legislation there is, as well as the recent experiences in the financial sector, the BD proposes the establishment of a “Commodity Market Supervisory Authority” (ROHMA).

2// COMMODITY FLIGHT AND THE REASONS FOR IT

Africa is the most suited of any of the world regions to illustrate the phenomenon that has been termed the “resource curse” by academics and politicians. The question it presents is as follows: Why do countries that are rich in minerals and fossils remain in such abject poverty? This does not hold true however for all countries – the resource curse is not an inevitable fate. Commodity-dependent countries such as Botswana, Canada, Indonesia, Norway or Oman use their natural riches wisely.³ And even in Africa, the average growth of commodity-rich countries is higher than those poor in commodities. Nevertheless, it is undisputed that commodity-rich countries can and should be growing far more than is really the case.⁴

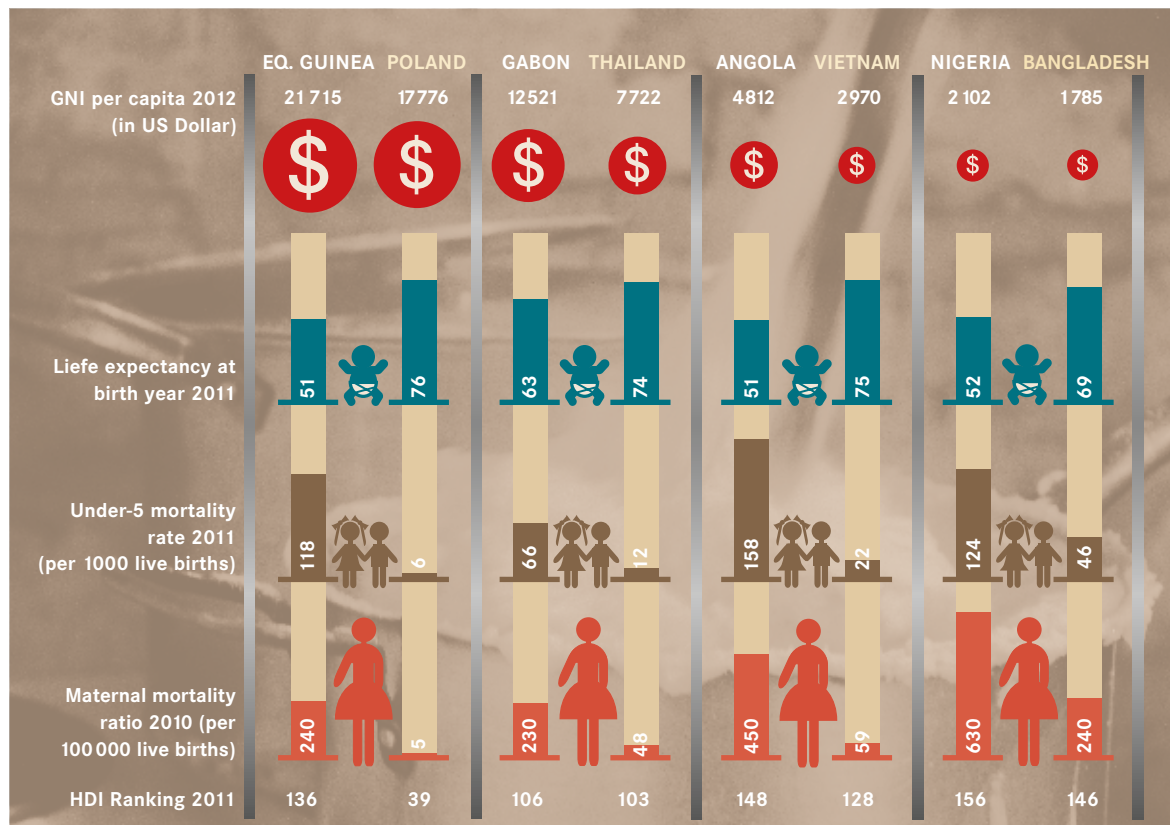
The problem is still more significant when development indicators rather than growth figures are considered. These show that 12 of the 25 countries with the world’s highest child mortality rate are in commodity-rich African countries. In Nigeria or Angola, despite growth derived from the oil boom, poverty has significantly increased. And in Equatorial Guinea, where the Gross National Income per head puts the country at 45th place, the UN Index for Human Development rating is much lower at 136 (of 187).⁵ FIG. 1.

The explanation for the divergence between economic growth and human development in commodity-rich developing countries is the extremely unequal distribution of wealth. Angola is a prime example: despite a decade-long crude oil boom, still half of the population lives in extreme poverty on only US\$ 1.25 per day. Nevertheless, in 2013, the daughter of the Angolan president, Isabel dos Santos, was named the first African woman to make the Forbes Billionaires List.⁶ The “Africa Progress Report”, edited by Kofi Annan among others, lists three main reasons for continued poverty in commodity-rich African countries:

- State funds and investment are not used to fight poverty
- The commodity sector is not sufficiently embedded in the national economy: this creates growth but hardly any employment.
- A “fair share” of the state’s commodity resources is missing: “The degree to which governments are able to capture for the public purse a fair share of the export wealth generated by minerals depends on the efficiency of taxation, and on the practices of investors. Many countries... are losing revenues as a result of weak management of concessions, aggressive tax planning, tax evasion and corrupt practices.”⁷

SOCIAL INDICATORS IN RESOURCE-RICH COUNTRIES ARE LOWER THAN EXPECTED

FIG. 1



Source: APP, 2013, p. 25.

The Swiss government is also well aware of the resource curse problem, as it demonstrated in its June 2014 report on transparency: “Commodities are often mined in countries that have poorly functioning state structures. Against this background, there is usually a risk, whether by the extraction or by the trading of commodities, that the payments made to the respective governments - such as taxes, royalties or other significant payments - drain away as a result of mismanagement, corruption and tax evasion, or are used to finance conflict. Consequently, the population barely

benefits from their countries' abundant natural resources and instead remains in poverty, a phenomenon which is referred to as the 'resource curse'⁸.

2.1 COMMODITIES AS THE BIGGEST (AND SOMETIMES THE ONLY) MEANS FOR DEVELOPMENT

The significance of commodity production for developing countries has increased dramatically in the last years and with it the extent of the resource curse. In 2011, 81 countries were driven by resources, compared with only 58 in 1995. The new arrivals are for the most part developing countries⁹, including the Democratic Republic of Congo and Zambia with copper, Angola and Equatorial Guinea with oil, Mozambique and Tanzania with gas, and Sierra Leone with iron ore¹⁰. Some 69% of people in extreme poverty live in commodity-rich developing countries. At the same time, half of the known iron, oil and gas reserves are found in these states. If these riches could properly benefit the people of these countries, extreme poverty could be almost halved by 2030, meaning that some 540 million people could find their way out of poverty¹¹.

2.2 THE (ABSENT) RESPONSIBILITY OF THE PRODUCTION AND TRADING COMPANIES

The fact that producing countries fail to benefit from their commodity wealth is, according to the Africa Progress Panel, directly linked to the behaviour of the commodity companies. Without a fair division of the commodity receipts between the producing countries and the mostly foreign companies, the resource curse cannot be reduced. Oxford professor and British government advisor Paul Collier also stresses the companies' responsibility: "Unlike purely productive activities, resource extraction generates rents as well as profits, as inherently valuable assets are lifted from the ground... Spectacular "profits" from resource extraction are likely to be rent-seeking: companies acquiring the natural assets of poor people. Such behaviour demonstrates not exceptionally high business talent but exceptionally low corporate ethics".¹² According to the "Economic Outlook" of the African Development Bank, mining countries should be able to collect between 40 and 60 percent of resource rents¹³. For the majority of states, this would mean a dramatic increase in their share.

Currently, only 12 percent of rents from copper production in Zambia are collected (2008), and only 10.2 percent of rents from gold in Tanzania (2009)¹⁴.

3// THE ROLE OF THE SWISS COMMODITY HUB

According to conservative estimates, the Swiss share of the global trade in commodities is 20 percent¹⁵, making the country the world’s most important trading hub. The entire Swiss commodity sector includes about 500 companies, the majority of which are active in trading (including numerous small companies). The main actors however are Switzerland’s biggest companies in terms of profit, such as Vitol, Glencore, Trafigura, Gunvor and Mercuria. In certain African countries, these companies play a key role. The following table **TAB.1** shows which countries export all or a major part of their crude oil through trading companies. (Marked below are those African countries suffering from the resource curse).

PRODUCING COUNTRIES’ DEPENDENCY ON TRADERS, USING OIL AS AN EXAMPLE

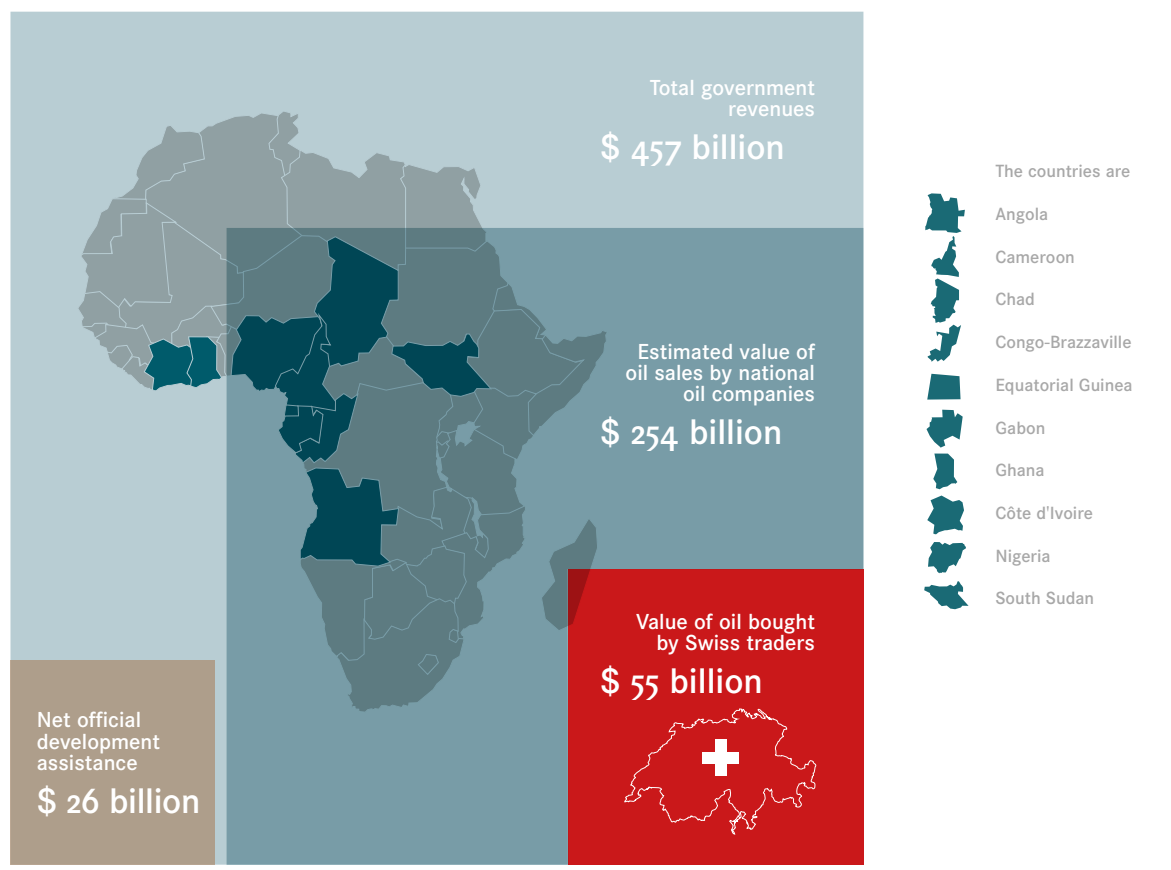
TAB. 1

COUNTRIES THAT SELL THE MOST CRUDE OIL DIRECTLY (WITHOUT GOING THROUGH TRADERS) TO END CONSUMERS	COUNTRIES WHICH ARE PARTLY DEPENDENT ON TRADERS	COUNTRIES THAT ARE ENTIRELY OR ALMOST ENTIRELY DEPENDENT ON TRADERS
Algeria	Angola	Congo-Brazzaville
Indonesia	Equatorial Guinea	Nigeria
Iraq	Gabon	South Sudan
Iran	Cameroon	
Canada	Colombia	
Kazakhstan	Libya	
Kuwait	Russia	
Malaysia		
Mexico		
Norway		
Saudi Arabia		
Sudan		
Syria		
Chad		
UK		
USA		
UAE		
Venezuela		
Yemen		

Source: Petroleum Revenue Special Task Force, Final Report, Federal Republic of Nigeria, August 2012.

Again here is Switzerland the dominant trading venue: around one quarter of the oil sold from African state oil companies between 2011 and 2013 went to Swiss commodity traders, who bought more than 500 million barrels worth about US\$ 55 billion. ¹⁶ This represents 12 percent of state revenues and twice the total development assistance to these countries¹⁶.

**FIG. 2 BIG SPENDERS: THE IMPORTANCE OF PAYMENTS BY SWISS TRADERS
IN AFRICA'S TOP-TEN OIL EXPORTING COUNTRIES, 2011-2013**



Source: For ODA data, we used 2011 and 2012 figures from the World Bank's 2014 *World Development Indicators* to estimate a 3-year total; for government revenues, 2014 IMF *World Economic Outlook*; for NOC oil sale and Swiss oil trading data, author calculations (see: EvB/NRGI/Swissaid, 2014, Big Spenders: Swiss trading companies, African oil and the risks of opacity

Given that these same countries often have insufficient refining capacity, many depend for their own supply of petroleum products (gasoline, diesel, kerosene, etc.) on imports by traders. Trafigura, for example, operating from Geneva and Lucerne, has a monopoly in the supply of fuel to Angola. A business for which the turnover was estimated at \$ 3.3 billion in 2011.¹⁷

As host country for companies that are particularly active and sometimes even dominant in countries affected by the resource curse, Switzerland has a political responsibility. Even more so given that the behavior of Swiss companies¹⁸ is often far from exemplary, as the following examples clearly show. The report on commodities published by the Swiss government in 2013 acknowledged a reputational risk for Switzerland. Nevertheless, the lack of action taken by the Swiss government remains a blatant contradiction to the humanitarian tradition of Swiss foreign policy.

3.1 COMMODITY PRODUCTION CASES

Despite their focus on trading, it is becoming increasingly more common to find the leading Swiss commodity companies active along the entire length of the value chain. Although the Swiss sector prefers to present itself as a group of “pure” trading companies, bearing no responsibility for the extraction or production of commodities, Swiss companies are in fact extracting oil or minerals and are becoming increasingly active in their production. These production activities take place in high-risk countries or even conflict-affected areas, as well as in countries with weak governance and high corruption risk. The following table over the page TAB. 2 provides an (admittedly incomplete) overview.

3.1.1 DEMOCRATIC REPUBLIC OF CONGO: GIGANTIC LOSSES

The Zug company Glencore procured two licenses for the exploitation of the copper and cobalt mines Kansuki and Mutanda. In order to obtain them, Glencore combined forces with Israeli businessman, Dan Gertler, who acted as a “door-opener” because of his close connection to President Joseph Kabila. Forbes described Gertler as “an emerging face of irresponsible capitalism in Africa”.¹⁹ These licenses were awarded without any process of tender at dumping prices to offshore companies owned by Gertler. Lacking any mining know-how, Gertler then re-sold the part of the licenses to Glencore. The benefits of the transaction, which actually should have gone to the Congolese state, landed in Gertler’s pocket. The state mining company, Gécamines, had sold the concessions at rock-bottom prices, thus losing potential revenue to the tune of 630 million dollars²⁰. In its commodity report, the Swiss government also mentions the “often dubious transactions behind the awarding of mining licences, which are sold at low prices to businessmen with close ties to the government.”²¹ Fair licensing agreements are one of the major challenges for producing countries. To achieve this, full transparency through publication of contracts is a necessary condition.

TAB. 2 PRODUCTION ACTIVITIES OF SWISS TRADING COMPANIES

GROUP	OPERATIONAL COMPANIES	COUNTRY OF PRODUCTION	SHARE (IF GREATER THAN 5%)
Trafigura	AEMR	Angola	?
	Tiger Resources Ltd.	Democratic Republic of Congo	26 %
	Compagnie minière de Seksaoua	Morocco	?
	Compania Minera Condestable	Peru	48 %
Vitol	Arawak Energy	Azerbaijan	100 %
	Vitol E & P	Ivory Coast	36 %
	Vtol E & P	Ghana	44,44 %
	Arawak Energy	Kazakhstan	100 %
	Arawak Energy	Russia	50 %
	Arawak Energy	Ukraine	40 %
Gunvor	PA Resources	Equatorial Guinea	49,9 %
	PA Resources	Democratic Republic of Congo	49,9 %
	LLC Petroresurs	Russia	14,7 %
	Kolmar	?	30 %
	PA Resources	Tunisia	49,9 %
Mercuria	Starc	Equatorial Guinea	?
	San Enrique	Argentina	?
	Petsa	?	100 %
	Glacco	?	?
	PT KEL	Indonesia	?
	Seplat	Nigeria	6 %
	Amromco	Romania	?
Glencore	AR Zinc	Argentina	100 %
	Sinchi Wayra	Bolivia	100 %
	Perkoa	Burkina Faso	50,1 %
	Katanga	Democratic Republic of Congo	75,2 %
	Mutanda and Kansuki	Democratic Republic of Congo	54,5 %
	Kazzink	Kazakhstan	50,7 %
	Prodeco	Colombia	100 %
	Los Quenuales	Peru	97,5 %
	Pasar	Philippines	78,2 %
	Mopani	Zambia	73,1 %

Sources: company websites, annual reports, bond prospectuses, etc.

3.1.2 GUINEA: SERIOUS SUSPICIONS OF CORRUPTION

A similar case is currently occupying the judiciary in six different countries. This case concerns the allocation of mining licenses in Guinea to Beny Steinmetz Group Resources, whose namesake - the Israeli billionaire Beny Steinmetz - is resident in Geneva. After a request for mutual assistance from both the U.S. and Guinea, in October 2013 the Geneva prosecutor opened an investigation against unknown persons for bribery of foreign public officials. The control centre of this tightly woven structure of offshore companies is also located in Geneva²². One of the central suspicions being investigated is whether one of the wives of the former president of Guinea was bribed in order to obtain licenses for the extraction of high-quality iron ore deposits in the Simandou mine. Steinmetz paid only 165 million dollars for the licenses in 2009. The following year, the Brazilian mining giant, Vale, paid 2.5 billion dollars for 51 percent of the shares of the company that owned the licenses. This money actually should have belonged to the Guinean people.

3.1.3 ZAMBIA: AGGRESSIVE TAX AVOIDANCE

Controlled by Glencore, Mopani copper mine in Zambia has - despite a long copper price boom - never booked any profits and therefore never paid any income tax. Through tax avoidance tricks such as profit-shifting and inflated operating costs, the group headquartered in Baar significantly diminished the benefits the copper boom might have had for the African country and its people. Mining royalties in Zambia have long been at a world-record low of 0.6 percent, which is why the non-profit-related revenue remained negligible. The reason for this was an extremely investor-friendly mining law, the effect of which was akin to handing out free passes to loot the land.

3.1.4 BRASIL: AGGRESSIVE TAX AVOIDANCE VIA SWITZERLAND

Switzerland is also used by foreign mining companies to engage in aggressive tax avoidance. Thus, the Brazilian mining giant Vale has, since 2006, brought several of its subsidiaries, previously domiciled in offshore financial centres, together in the small Vaudois town of Saint-Prex. Until 2011, the group enjoyed full tax exemption on both the municipal and cantonal levels. Thanks to the so-called Bonny Decree, only 20 percent of the profits from Vale International were taxed in Saint-Prex at the federal level between 2006 and 2012. This profit amounted, according to estimates made by Télévision Suisse Romande, between 2006 and 2009 to CHF 15 billion. This represents 40 percent of the total profit of a group whose employees number 80,000 worldwide, of which, at the end of 2012, just 117 were working in Saint-Prex²³. In other words, the total profit generated was booked at the Swiss site - at the expense of the countries of production.

3.2 COMMODITY TRADING CASES

3.2.1 ANGOLA: TRANSACTIONS WITH POLITICALLY EXPOSED PERSONS (PEPS)

Since 2009, Trafigura has been participating in an opaque joint venture with General Leopoldino Fragoso do Nascimento (called “Dino”) in Angola. The company, run jointly with the former special adviser to the Angolan President, imports and distributes petroleum products. In 2011, it made sales of \$3.3 billion, 50 percent of which belong to Cochran Ltd, a company registered as a Bahamas mailbox company. The director of Cochran’s Singapore subsidiary is none other than General Dino, who has several business interests in Angola²⁴. Through another Cochran company in Angola, he is also involved in Puma Energy, a subsidiary of Trafigura that operates service station networks in Africa, Latin America and Australia. With these and other businesses, the ever-busy confidant of President Dos Santos makes a total mockery of the Angolan law on administrative probity.

3.2.2 CONGO-BRAZZAVILLE: STATE OIL ON SPECIAL OFFER

The Swiss trading company, Gunvor, is at the center of an investigation by the public prosecutor for money laundering. Between 2010 and 2012, a trader active in Geneva set up a system of presumably illegal “commission payments” in order to export 18 million barrels of crude oil from Congo-Brazzaville. The beneficiaries were close to the notoriously corrupt president, Denis Sassou Nguesso. Two accounts at the Geneva branch of the bank Clariden Leu are today still blocked as a result.²⁵ The commissions were well spent – according to press reports, Gunvor acquired the oil at a discount of US\$ 4 per barrel.²⁶

3.2.3 NIGERIA: PRIVATISED SUBSIDIES

In October 2012, the Nigerian authorities sent letters to Switzerland, requesting assistance with regard to five Swiss commodities traders²⁷. The companies were not accused directly, but were in possession of documents that could prove large-scale fraud by their Nigerian counterparts in relation to fuel imports. Between 2009 and 2011 Nigerian companies claimed unjustified government subsidies in the amount of \$ 6.8 billion. Nigerian authorities and non-governmental organizations, including the Berne Declaration, have shown how Swiss dealers helped their Nigerian partners in the fraud by documenting false quantities or prices, notably by arranging delivery outside of Nigerian territorial waters.²⁸ Many of these Nigerian companies have close ties to senior officials. This example shows why, to prevent commodity traders - such as banks - from

working with money from politically exposed persons at the expense of producing countries, traders must be made subject to statutory due diligence requirements.

3.3 A CASE INVOLVING A SWISS PROCESSING COMPANY

3.3.1 CONGO: STOLEN GOLD AND “COMMODITY-LAUNDERING”

In 2004 and 2005 the Swiss gold refinery Argor-Heraeus SA processed approximately three tons of gold from Uganda. For several years, the UN, NGOs and the media had been reporting that Uganda was serving as a transit country for gold from the Democratic Republic of Congo – according to Ugandan statistics, the country produced less than one percent of the gold it exported. The gold exports that were delivered to Argor had financed the activities of a paramilitary militia in Congo. In November 2013, the organization TRIAL filed a criminal complaint at the public prosecutor’s office against Argor-Heraeus SA for “qualified laundering of assets”. The investigations in this classic case of commodity-laundering are ongoing.²⁹

4// PRELIMINARY CONCLUSIONS: SWITZERLAND BEARS POLITICAL RESPONSIBILITY FOR THE PART IT PLAYS IN THE RESOURCE CURSE

The Swiss government acknowledged the problem of the resource curse in its “Background Report on Commodities”, published in the spring of 2013: “As the industry increases in size, it brings with it additional challenges that must be taken seriously, among others, in the domain of human rights and environmental protection in resource exporting countries, in the fight against corruption, and in connection with the phenomenon of the “resource curse” in developing countries. These challenges can also involve reputational risks for individual companies, and for Switzerland as a country, in particular, where the conduct of companies domiciled in Switzerland should run contrary to positions taken and supported by Switzerland in the domains of development policy, and the promotion of peace, human rights, and social and environmental standards.”³⁰

The above (only representative) examples illustrate the extent of the problem caused by Swiss commodity companies. Despite this, the report ignored Switzerland's political responsibility with respect to the resource curse, failing to propose regulatory measures that could and must be taken by Switzerland as the country of domicile for global commodities companies. This is why BD is now proposing a complex package of concrete measures, the implementation and compliance with which would create a specific monitoring authority: the Swiss Commodity Supervisory Authority, or ROHMA for short (from the German "Rohstoffmarktaufsicht").

5// WHY THE CURRENT REGULATION IS NOT SUFFICIENT

5.1 MONEY LAUNDERING

Swiss commodity traders do not need to know the conditions of production of the commodities they trade in nor must they have detailed information on their business partners. By conducting trade with commodities of suspicious origins, traders may, whether intentionally or negligently, end up being complicit to crimes that have been committed at an earlier point in the value chain. This is how traders can launder "dirty" commodities. Dirty commodities can be described as follows:

- Those that have been illegally or illicitly acquired (e.g. through theft or corruption);
- Those that have been acquired in violation of human rights standards;
- Those that are sold to finance conflict or criminal organisations.

There are no equivalent measures to counter the smuggling of illegal commodities into the Swiss trading centre. The Money Laundering Act does not, for the most part, apply to commodity trading. This is why a new supervisory authority is needed to make clear guidelines, and require commodity traders to verify their supply chains. Appropriate due diligence and related processes are therefore necessary to ensure that no illegal commodities have been acquired.

It is common in countries in the grip of the resource curse to siphon off all or some of the country's income from commodities – always at a cost to the people. This is where, to disguise the identity of real owners and beneficiaries, offshore shell companies and straw-men often come into play. The European Parliament has recently decided that, in the future, to assist the fight against

money laundering, EU member states must introduce publicly accessible registers of beneficial owners. And not only just of companies, but of foundations and trusts as well.³¹ Such transparency of beneficial owners has also been missing in Switzerland until now. The Swiss Commodity Supervisory Authority is therefore also necessary to prevent trading with dirty commodities and to engender greater transparency in the sector.

5.2 CORRUPTION

The World Bank estimates that each year some 1,000 billion US dollars are paid in bribery payments.³² This conservative estimate only covers corrupt payments made by private sector actors to public sector ones, and does not include the value lost through other corrupt practices, such as the embezzlement of public funds or theft of public assets. According to calculations made by the African Development Bank, corruption costs the continent up to half its tax revenue and over 30 billion dollars in development aid yearly.³³

Bribery is a particular problem in the commodities sector: in Transparency International's Bribery Payment Index of 2011³⁴, the oil and gas industry was judged to be the world's fourth most corrupt industry, with mining found to be the fifth. As acknowledged by the Swiss government in its "Background Report: Commodities", the fact that a large proportion of the world's natural resources are located in countries with weak governance and endemic corruption means that the problem "is exacerbated by the high degree of interaction between the companies concerned and the government authorities in those countries; the awarding of public contracts, the granting of licences, the payment of royalties, the creation of monopolies, and the determination of customs policies are all procedures that tend particularly to attract incitement to bribery."³⁵

As a result of these strategically paid bribes, sometimes through one or more intermediaries, companies are able to secure contracts or obtain access to natural resources on uncompetitive terms. While the Swiss law prohibits companies from engaging in bribery themselves, it does not prohibit them from dealing with individuals or companies that have obtained their product through corrupt practices³⁶. This means that Swiss commodity traders can – and moreover do – take advantage of these unfair practices. Therefore specific due diligence processes are needed for this sector, which cover both the production conditions, and the trading partners and their environment. And that is why, in order to enforce these due diligence processes and ensure their effectiveness, Switzerland needs the Swiss Commodity Supervisory Authority.

5.3 INDIRECT REGULATION VIA FINANCIAL MARKET PLAYERS? FORGET IT!

The Swiss commodity sector and the government deny their responsibility in the fight against illegal commodities and the necessity of new measures, claiming that the banks, which finance the traders, are already submitted to the money-laundering legislation. This is how they imagine that business with illegal commodities is prevented. This approach is wrong for at least three reasons:

1. In commodity trading, there are many moneyless transactions that take place, such as “swaps”, where crude oil exports are directly (i.e. without financial intermediaries) offset against imports of refined products.
2. Banks carry out due diligence on their own clients, but not on the clients or business partners of their clients. And they do not have all relevant information, such as in relation to the prices charged and their appropriateness.
3. A commodity trader can also intentionally deceive its bank.

Those financial institutions brought together in the Wolfsberg Group to combat money laundering (including UBS and CS) confirm this in a document on “Trade Finance”: “In determining whether transactions are unusual due to over or under invoicing (or any other circumstances where there is misrepresentation of value) it needs to be understood that Banks are not generally equipped to make this assessment.”³⁷

5.4 THE SWISS REGULATION OASIS IN THE GLOBAL TRANSPARENCY TREND

Transparency of payments, meaning the publication of all payments made to governments in production countries, is the most developed instrument to date to counter the resource curse. “Payments” are interpreted broadly to include all cash-equivalents from mining or production companies to governmental bodies or state entities, including payments for licenses, taxes, royalties or for the sale of crude oil. But transparency of payments alone neither tackles the causes of the resource curse nor leads to a fair distribution of commodity rents between producing countries and the companies. It is however an effective and crucial instrument for the improved use of commodity revenues in producing countries, because their potential misappropriation can be detected and combated. And it enables the people in these countries to hold their governments to account for their most important source of income.

The principle of transparency of financial flows in the commodity sector has been applied by the Extractive Industry Transparency Initiative (EITI) since 2003. The EITI is a multi-stakeholder

initiative between states, companies and civil society. A country joining the EITI must ensure that extractive companies operating within its borders disclose all its payments to government agencies. Likewise, government authorities must also publish the amounts received. Independent auditors must then match these two statements up and take note of any differences.

As a role model EITI also has significant weaknesses. In particular, important producing countries are not EITI members – it is not by mistake that some of these include countries with serious governance and corruption problems (e.g. Russia, the democratic Republic of Congo, Angola or Gabon).³⁸ Further, a Revenue Watch Institute study shows that of 58 countries, of which the majority are EITI members, three quarters are nevertheless still only described as having “partial” or “weak” transparency standards.³⁹ This is because some countries that are considered as conforming to the EITI standards, nevertheless fail to publish important payment information. And finally, the EITI only decided in 2013 to include trading business. Payments also for the sale of commodities through governments or state—owned companies should also be published. EITI States which themselves sell substantial commodities are required to publish their income. In contrast to production companies, it is only recommended that EITI States undertake to require such companies to disclose.

These three gaps show that legislative measures are needed in the places of domicile of commodity companies in order to achieve transparency of unwilling or incapable governments of producing countries. The U.S. enacted the Dodd-Frank Act (Section 1504) in August 2012, the first such legislation in a “Home State”. Accordingly, all listed mining and oil companies now have to report their payments to governments over 100,000 US dollars, country by country and project by project. In June 2013, the EU followed with a similar scheme.⁴⁰ And in Canada, a working group with representatives from resource companies and civil society has recently made proposals for analogous legal action.⁴¹

Commodity trading is barely covered by current transparency regulation in home states. As demonstrated above, commodity traders are absolutely central for Switzerland as home state as well as for producing countries. This is why Switzerland needs a law on transparency that captures listed as well as privately held commodity trading companies. Only this way can our country make its contribution to the fight against the resource curse, and at the same time stop Switzerland from being a regulation-free oasis that attracts shady companies.

6// CONCLUSION: SWITZERLAND NEEDS A COMMODITY SUPERVISORY AUTHORITY

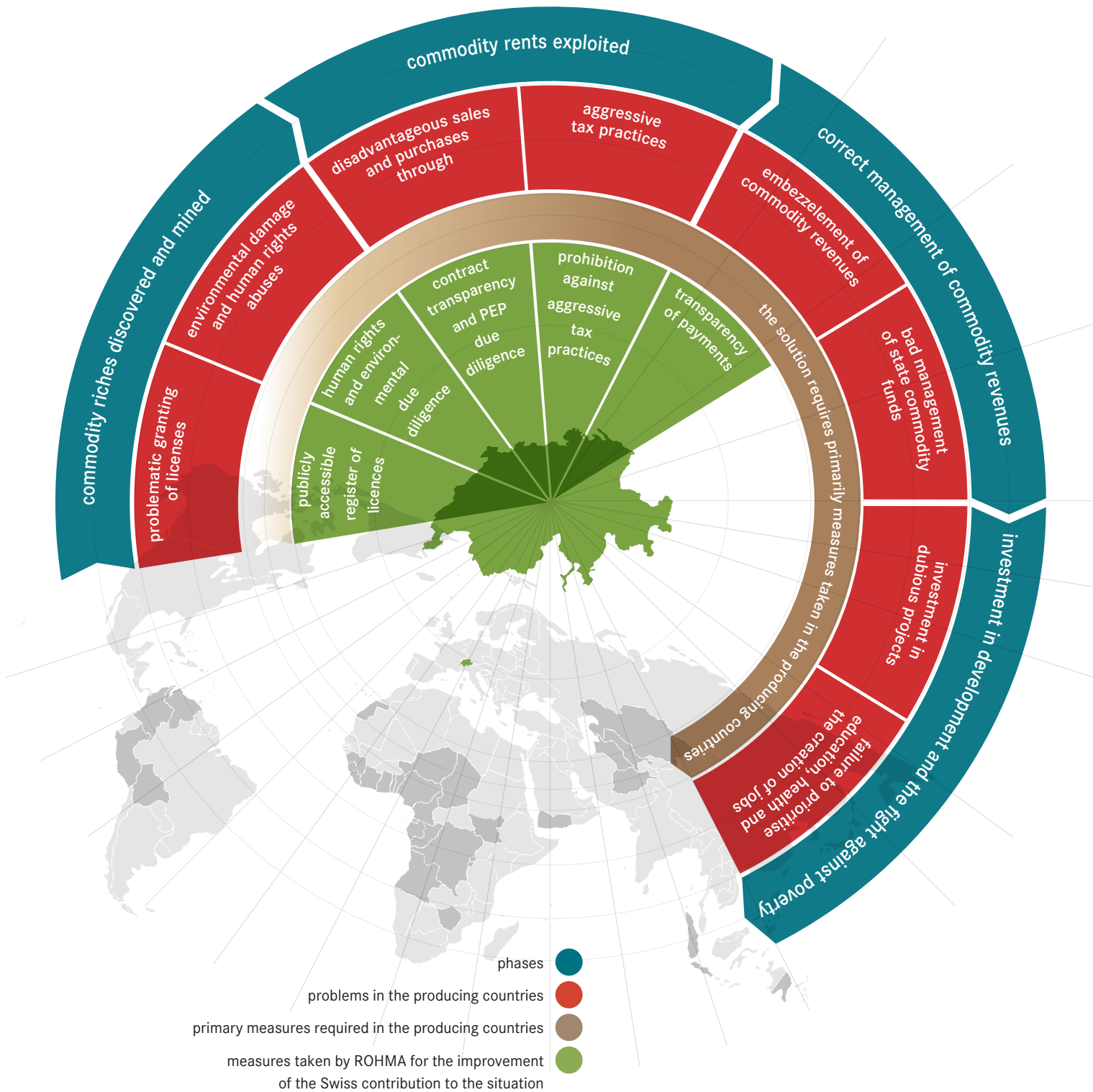
The government's commodity report found that: "Switzerland, as a rule, does not pursue economic policies tailored to individual sectors"⁴². There is, however, an important exception: the Swiss Financial Market Supervisory Authority, FINMA, provides "consistent supervision and predictable regulation"⁴³. In addition, the financial sector is regulated by its own legislation. FINMA has a diverse job and should:

- Protect clients of the financial market from bankruptcies of financial institutions, unfair commercial practices and unequal treatment on the stock exchange;
- Ensure the stability of the financial system;
- Promote confidence in the orderly functioning of the financial markets;
- Ensure the reputation, and contribute to the preservation and development of the competitiveness of the financial center⁴⁴.

The BD's proposal for a commodity market supervisory authority Switzerland (ROHMA) is the first time such an extensive and detailed proposal for regulation of the commodity sector in Switzerland has been presented. As an independent authority, ROHMA could contribute to reducing the problem of the resource curse and mobilizing 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. The supervisory activities could ensure that companies carried out due diligence:

- 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 that have been sold in order to finance conflict or criminal organizations;
- with respect to a company's business partners to prevent unauthorized transactions with politically exposed persons, whose privileged position can 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. Having granted a license to a commodity company, ROHMA would then



Source: BD, based on the Natural Resources Governance Institute

ensure that that company meets all the conditions for its license as well as all legal and regulatory requirements, on an ongoing basis. Finally, because Switzerland, through ROHMA, would have become a pioneer in this field, it could encourage the other international commodity trading centers to adopt similar rules against the resource curse⁴⁵.

More on how ROHMA would work against the resource curse can be found here in an extensive and detailed proposal: www.rohma.ch.

Switzerland acknowledged the significance of the commodity sector a few years ago. The BD made an important contribution with its book, “Commodities: Switzerland’s most dangerous business”. Slowly, the realization of the problems caused by this industry has been spreading, with the associated risks to Switzerland’s reputation and its position in the global community gradually being acknowledged and taken seriously. The definition of the problems has, however, remained out of focus, with affected parties waiting so far for constructive solutions in vain. The BD has demonstrated in this paper that the contribution of Swiss players to the resource curse is a central problem that must be urgently addressed. The Commodity Supervision Authority would guarantee a responsible Swiss commodity hub that helps the producing countries use their wealth for the benefit of their populations.



Rohstoffmarktaufsicht Schweiz ROHMA
Autorité de surveillance des marchés de matières premières ROHMA
Autorità federale di vigilanza sui mercati di materia prima ROHMA
Swiss Commodity Market Supervisory Authority ROHMA

ENDNOTES //

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- ⁴⁵ In addition to ROHMA, legal reforms are also needed in Switzerland. These are also of central importance in combatting the resource curse and should be extended to cover all Swiss multinational companies:
 - Publicly accessible registers of beneficial owners;
 - Duty to respect human rights and to carry out related due diligence per the United Nations Guiding Principles on Business and Human Rights;
 - Improved access to the Swiss courts for victims of severe human rights abuses by Swiss companies abroad.



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