



global witness

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Global Witness Q&A on ENRC in the Democratic Republic of Congo

ENRC is one of the world's largest mining groups, with \$7.7 billion in revenues just last year. It is listed on the London FTSE-100 index and owns mining operations across South America, Asia and Africa.

Global Witness has been investigating ENRC's acquisitions in the Democratic Republic of Congo. Between 2009 and 2012, the company acquired billions of dollars worth of copper and cobalt mining assets in the country, all of which involved the businessman Dan Gertler, who is a personal friend of Congo's president Joseph Kabila.

What has ENRC acquired in Congo?

ENRC has acquired a number of mining projects in Congo. In September 2009 it spent £584 million to acquire CAMEC, a smaller mining company which controlled a number of copper and cobalt mining projects in Congo including a 50 per cent stake in the SMKK copper and cobalt mine. By June 2010, ENRC had acquired the remaining 50 per cent stake in the SMKK mine from Congo's state run miner Gecamines for a total of \$75 million.

In August 2010, ENRC announced it had acquired a stake in the giant Kolwezi tailings project, which the Congolese government had confiscated from rival company First Quantum. ENRC paid \$175 million for Kolwezi and some other assets. ENRC also states that it controls the Frontier and Lonshi copper mines, which were also confiscated from First Quantum in 2010, but has not yet revealed how much it paid for these assets.

In July 2011, ENRC acquired another mining permit from an offshore company called Dezita Investments Limited, for a total of \$195 million.

What are the links between ENRC and Dan Gertler in Congo?

Since early 2010, a scandal has been raging in Congo around the secret sales of stakes in several of the country's most important copper and cobalt mines.

According to the data that Global Witness has gathered – which is disputed by Mr Gertler and the Congolese authorities - these assets were all sold off in secret by Congolese state mining companies, usually at a small fraction of their commercially estimated values. Sometimes the sales prices were in the region of five per cent of the valuations.

The immediate buyers of these mining assets were offshore companies, which have in some cases quickly sold the mines on for huge profits. The full list of beneficiaries of the offshore companies – registered in the British Virgin Islands and elsewhere - is a secret. Global Witness is concerned that

the beneficiaries could include corrupt Congolese officials who played a role in ensuring that the mines were sold off so cheaply.

Information has come to light that several of the offshore companies concerned are linked to Mr Gertler.

In ENRC's case, it bought its stakes in Congolese mines from some of these offshore companies. ENRC's purchase of its stake in Kolwezi was structured through a deal between itself and at least seven companies registered in the British Virgin Islands, all connected to Dan Gertler. When ENRC bought the remaining 50 per cent stake in SMKK, it purchased it from another British Virgin Islands company linked to Mr Gertler. Even ENRC's acquisition of CAMEC involved sale purchase agreements with several offshore companies linked to Dan Gertler which held shares in CAMEC. Global Witness has serious concerns about these offshore companies and whether corrupt Congolese officials are among their beneficiaries. A spokesman for Mr Gertler has said that the only beneficiaries of companies in the Fleurette Group, Mr Gertler's holding company, are members of his family. **In a statement sent to Global Witness, ENRC said it "has a zero-tolerance policy to bribery and corruption, which extends to all of our business dealings, across all of our operations."** It said it would take appropriate action to address corruption concerns.

Why does Mr Gertler appear to be getting mining assets so cheaply?

That's a good question. Neither Global Witness nor, most importantly, the Congolese people have been privy to the inner workings of Congolese decision-making. Because of this and the secret nature of the deals, it is impossible to know for sure, which demonstrates why there is a critical need for transparency around all such mining and oil deals. In the absence of full transparency the involvement of corrupt Congolese officials cannot be ruled out.

What happens next?

One of two things happens:

1. Some of the companies associated with Mr Gertler have sold on stakes in the mines at vastly higher sums – something Mr Gertler challenges.
2. Mr Gertler's companies keep hold of their stakes, with the intention of reaping profits over the longer term. Often the Gertler-associated companies have their share of costs covered by their international partners, which means they do not risk any of their own money in developing the mines.

What does all of this mean for Congo?

Congo - a desperately poor, war-ravaged country - is losing out on billions of dollars of revenues. The Congolese state is getting very little in return for many of its best mines. The profits are going into the hands of unknown people and their international partners. It's also worth thinking about what Congolese authorities might be doing with the money from the mine sales. In 2011, some of the proceeds were used by the Congolese government to cover costs related to the 2011 election, which returned President Kabila to power. The polls were condemned as flawed by international diplomats and election observers and were marred by killings committed by government security forces.

Now that lots of mines have been sold off, isn't it too late to do anything?

With such huge sums of money at stake, with more minerals to exploit in Congo, and with the Congolese people still in the dark about where their money has gone, this is too important a matter to let rest. Secret sales of natural resource wealth to offshore companies in Congo are now sadly a firmly established pattern going back to well before 2010. And this is not just about Congo's mines. Congo is expecting a boom in oil production, and at least two oil blocks have been sold off in very similar circumstances.

What are Global Witness's chief concerns?

In Global Witness's opinion, the recent mining deals linked to offshore companies exhibit a number of danger signs that could indicate possible corruption:

1. The mining assets have been sold at extremely low prices
2. The sales took place in secret
3. There were no tenders.
4. That real shareholders of the companies getting the assets are secret

Global Witness finds it difficult to understand why Mr Gertler's companies have been getting so many assets in secret, and why the prices they pay are consistently so far below commercial estimates.

We're concerned that corrupt government officials or their proxies could be among the secret owners of the many offshore companies involved.

We're worried that Mr Gertler may be unduly benefiting from his friendship with President Kabila – something that Mr Gertler's representatives vehemently deny.

These concerns raise legitimate questions about who is actually benefitting from the deals. Congolese citizens have a right to know.

What needs to happen?

Global Witness is urging Mr Gertler and his business partners to list all the "beneficiaries" of these deals – that is, all the real (or "beneficial") owners of the offshore companies involved and those who were paid as a result of these deals.

International companies partnering with Mr Gertler should fully and publicly disclose all they know about his offshore companies and, if his companies are deemed to be a serious corruption risk, they should end their collaboration.

International firms should be careful of stepping in as the end-buyer of stakes in mines sold off in such questionable circumstances, or even of partnering up with offshore companies involved in such deals. If they end up funding these offshore entities in any way, they risk effectively completing a circle of corruption – perhaps providing the funds that allow corrupt officials to be paid off.

What should ENRC shareholders do?

ENRC's share price has already been badly affected by the scandal generated over the sale of Kolwezi. Shareholders should also think about how their company might fare if there was a change of government in Congo, which may not look kindly on any deals proven to have been corrupt.

ENRC shareholders must hold their company to account on these matters and insist that the company publish the results of its external anti-corruption audit in full, inclusive of comprehensive responses to questions submitted to it by Global Witness, which are available at www.globalwitness.org/secretsales.

Shareholders should insist that the company cease dealing with offshore companies whose beneficiaries are not publicly declared, and where there are significant risks of corruption.

Unless the company acts to clear up questions over its dealings in Congo, shareholders will be at risk of their investment being undermined.

Can Congo's donors do anything?

A \$550 million IMF aid programme to Congo is currently frozen but it is considering restarting it soon. The World Bank is considering providing hundreds of millions more dollars of governance aid to the country.

The UK alone is planning to provide £900 million of bilateral aid to Congo between 2011 and 2015, not including the large amounts it also gives via institutions such as the World Bank, the IMF and the UN. Key bilateral donors, together with the IMF and the World Bank, should intensify pressure on Congo to ensure this issue is properly addressed. While humanitarian aid must continue, Global Witness questions the wisdom of continuing with such large amounts of governance aid at a time when the governance of Congo's resources is in such dispute.

Donors should scale back governance aid until they are confident that the Congolese government is fulfilling its basic duties regarding transparency and anti-corruption measures.