



IFFs and Oil Commodity Trading Series

INVESTIGATIVE JOURNALISM AND FISCAL TRANSPARENCY: CATALYSTS FOR ADDRESSING CORRUPTION IN OIL-PRODUCING DEVELOPING COUNTRIES

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Abstract

This paper looks at the contribution of two different initiatives in the fight against corruption in oil-rich developing countries, analysing these in turn and reflecting on ways of enhancing their efficacy and maximising synergies. The role of investigative journalism on the one hand, and that of fiscal transparency on the other, are complementary. Firstly, this paper assesses the role of global investigative journalism – i.e., Panama Papers, Luanda Leaks and Pandora Papers – and of civil society organisations with an investigative function – i.e., the *Biens Mal Acquis* cases – in exposing grand corruption and setting in motion legal, judicial and regulatory approaches to recover illicit proceeds. This includes action in both destination and transit countries, as well as on global enablers of corruption. Secondly, it examines how growing demands for accountability and transparency have motivated the International Monetary Fund (IMF) to address corruption and governance more explicitly in its engagements with Angola and the Republic of the Congo – as source countries. Finally, it explores the potential for these different initiatives to further enhance accountability and integrity by better leveraging their complementarities.

Foreword

Tackling illicit financial flows (IFFs) has gradually become a global priority, spurred by the 2008-09 global financial crisis, the revelations of the Panama Papers and Paradise Papers in 2016-17, and frequent high-profile scandals involving some of the world's largest corporations and high-ranking politicians.

The OECD Development Assistance Committee (DAC) has made substantive contributions to this agenda by [measuring countries' performance in their fight against IFFs](#); tracing the efforts of OECD member countries to increase [investigation of stolen assets and their repatriation to countries of origin](#); and, through analysis on [The Economy of Illicit Trade in West Africa](#), which shifted the focus away from IFFs as financial crimes towards a greater appreciation of their economic, security and developmental impacts.

Launched in March 2019 by the Anti-Corruption Task Team, a subsidiary of the DAC, the current programme of work examines the vulnerability of oil producer countries to IFFs in the oil sales process, reviews the efficacy of official development assistance to date in mitigating these vulnerabilities, and suggests ways to enhance the impact of future efforts. As part of this endeavour, this paper focuses on three case studies: the *Biens Mal Acquis* affair, Angola and the Republic of Congo. Drawing on lessons learnt, it aims to inform measures to fight corruption and address ill-gotten gains.

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Acronyms and abbreviations

AML	Anti-money laundering
BIC	Bank Information Center
BMA	<i>Biens Mal Acquis</i>
BNA	National Bank of Angola (Banco Nacional de Angola)
CCFD	Comité catholique contre la faim et pour le développement -Terre Solidaire
CFT	Countering the financing of terrorism
CSO	Civil society organisation
DAC	Development Assistance Committee (OECD)
ECF	Extended Credit Facility
EFF	Extended Fund Facility
EITI	Extractive Industries Transparency Initiative
EU	European Union
FATF	Financial Action Task Force
FTC	Fiscal Transparency Code
GDP	Gross domestic product
HIPC	Heavily Indebted Poor Countries
ICIJ	International Consortium of Investigative Journalists
IFF	Illicit financial flow
IMF	International Monetary Fund
OECD	Organisation for Economic Development and Co-operation
PEP	Politically exposed person
PRGF	Poverty Reduction and Growth Facility (IMF)
ROSC	Report on the Observance of Standards and Codes
SBA	Stand-by arrangements (IMF)
SMP	Staff monitored program (IMF)
SNPC	National Oil Company of Congo (Société Nationale des Pétroles du Congo)
UWO	Unexplained wealth order

Executive summary

In recent years, the volume of public revelations about illicit wealth and grand-scale corruption by politically exposed persons (PEPs) reached unprecedented levels. High-profile revelations by journalists of alleged oil-related corruption have helped expose flaws within the global financial system and anti-money laundering frameworks. They shine a light on enablers of corruption and on the specific role and responsibility of destination and transit countries and reveal areas in need of better policy coherence for sustainable development, as illustrated by the *Biens Mal Acquis* affair.

In parallel, the International Monetary Fund (IMF) has sought to address corruption and promote fiscal transparency norms in oil-producing developing countries – as source countries for corruption and illicit financial flows (IFFs) – through several governance tools, such as its Fiscal Transparency Code (FTC) or Article IV consultations, as illustrated in the Republic of the Congo and Angola – case studies in this report.

Investigative journalism, on the one hand, and fiscal transparency initiatives led by international organisations, on the other, have contributed to fighting corruption from oil-producing countries, at different albeit complementary levels. However, given the complexity and dynamics of corruption, such efforts have remained partial and insufficient, often failing to connect closely. Building on the specificities and potential value-added of these different initiatives, there is strong potential to better connect, co-ordinate, and leverage them to fight against corruption and IFFs in developing oil-producing countries. Identifying corruption, efficiently fighting it, and instilling greater transparency and accountability as long-term sustainable improvements call for the interplay and complementarity of events and actors getting more traction.

Key findings

Transnational investigative journalism has contributed to exposing the modus operandi of corruption, for example when multiple news organisations analysed and reported on the Panama Papers, Luanda Leaks, Pandora Papers, etc. At the core of these investigations is the transnational dimension of corruption, and an appreciation of the roles of source, transit and destination countries in facilitating or disabling opportunities for IFFs, money laundering and corruption. High-ranking PEPs in source countries, including in the two country case studies reviewed in this paper: the Republic of Congo and Angola, have been linked to grand corruption, as have intermediaries such as banks, financial institutions and specific sectors of the economy that serve as safe havens for illicit proceeds in transit and destination countries.

Investigations by journalists and civil society can create momentum for legislating and enforcing measures to freeze, confiscate and return stolen assets. The cases known collectively as the *Biens Mal Acquis* (BMA) affair began with the investigation by a French civil society organisation (CSO) into illicit wealth that was being invested in France by foreign officials. It resulted in criminal investigations and legislative changes in France and abroad.

The impacts of recent investigative journalism initiatives on the fight against corruption depended on specific enabling factors. The impact of the revelations on prosecutions, seizures, and restitution of

corruption proceeds and on a range of actors and processes owed much to specific features of the French legal system - as the destination country - and to momentum in global systems and oil-producing source countries. Publicity about alleged corruption and judicial procedures to bring perpetrators to account can also have unintended consequences, hence the need for co-ordinated, global measures to ensure that fighting IFFs leads to a reduction in such flows, instead of the mere relocation of illicit wealth.

Anti-corruption and fiscal transparency initiatives by major international organisations such as the IMF have gradually evolved. Context-specific factors, internal IMF dynamics and external forces have shaped the way the Fund addresses these issues, albeit in a non-linear manner. In recent years, IMF Article IV consultations, surveillance activities and supported programmes have introduced deliberate efforts to promote and assess governance and fiscal transparency.

Progress on strengthening fiscal transparency and tackling systemic corruption has been uneven and non-linear. While countries have adopted laws and regulations, the analysis suggests that the core weaknesses that enable systemic corruption remain unaddressed. Constraining factors have also often reversed progress. Analysis of Article IV reports suggests that focusing more consistently on corruption vulnerabilities and fiscal transparency standards in surveillance activities could bolster the impact of IMF anti-corruption and fiscal transparency initiatives. Article IV consultations and the FTC are not systematically linked – with few explicit mentions of fiscal transparency norms in Article IV reports. There is space to better connect and leverage these. Similarly, and although the IMF and investigative journalists share common objectives in terms of integrity and accountability, they have yet to actively seek complementarity and leverage one another’s work and knowledge.

Main insights for donors and the international community

Policy coherence of country responses to corruption and illicit flows across source, transit and destination countries is crucial to offset unintended consequences of such policies. A systemic approach will help better address the multifaceted and transnational dimensions of IFFs. This requires development co-operation actors to collaborate more with those working on anti-money laundering, responsible business conduct, sanctions, and law enforcement.

Investigative journalism is instrumental in exposing the dynamics and enablers of corruption and facilitating accountability. By holding individuals and governments to account, it fosters accountability and, where needed, corrective actions. Uncovering corruption demands independent, professional analysis. Effective investigative journalism thrives in environments that protect the freedom of the press. In some contexts, investigative journalists will need external support to guarantee their independence, integrity, and the visibility of their work.

There are two options for better co-ordinating integrity initiatives, including in oil-rich developing countries:

1. IMF efforts would be enhanced by better connecting Article IV surveillance consultations with FTC Pillar IV on natural resources, and linking these with relevant investigative journalism efforts
2. With better co-ordination and connections, investigative journalists identifying transaction-based corruption could help trigger more comprehensive IMF actions against corruption and IFFs.

1 Scene-setting

A wide variety of instruments can inform or be part of anti-corruption strategies and action plans. This paper analyses the distinct but complementary roles of investigative journalism and fiscal transparency initiatives in fighting corruption, with a specific focus on oil-producing developing countries. It looks at the links between source and destination countries of illicit financial flows (IFFs), the transnational scope of investigative journalism, and fiscal transparency initiatives led by multilateral development organisations, in oil-rich developing countries.

Anchored in the implementation of the Development Assistance Committee (DAC) Anti-Corruption Task Team (ACTT) programme of work on IFFs and oil commodity trading, the main objective of this paper is to analyse the role and impact of two specific elements, i.e., investigative journalism and fiscal transparency, in fighting corruption in oil-producing developing countries. The paper focuses on identifying the enabling factors and impact of the *Biens Mal-Acquis* affair, and on understanding the scope and impact of IMF's anti-corruption and fiscal transparency efforts in oil-producing developing countries. It further considers how these two types of actions could allow for enhanced effectiveness as two distinct, albeit connected, pillars of fighting corruption and promoting integrity in oil-producing developing countries.

How investigative journalism and fiscal transparency initiatives shape the fight against corruption

The paper is organised around two core questions. The first relates to the role and impact of major corruption investigations by journalists – and civil society organisations¹ in their investigative function – in fighting corruption and IFFs. It analyses their impact on laws and policies, key stakeholders and drivers of transnational corruption. The second question relates to the International Monetary Fund (IMF), which provides significant support to oil-producing developing countries, and how it has used and adjusted its tools, specifically its Fiscal Transparency Code (FTC) and Article IV consultations,² to address governance issues and vulnerabilities to corruption and promote fiscal transparency norms. The IMF's country engagement over time is examined in detail, with the Republic of the Congo (hereafter Congo) and Angola as case studies.

In terms of methodology, this work is informed by secondary sources such as media articles, research, and reports of non-governmental organisations; official IMF documents; and a few interviews and email exchanges with relevant actors, including representatives of multi-stakeholder organisations, think tanks and the IMF. Interviews and exchanges with key stakeholders were conducted on the basis of anonymity and considered as personal communications in the context of this paper.

This initial chapter briefly looks at several of the major scandals that grew out of investigations, starting with the *Biens Mal Acquis* (BMA) cases in France, and how these spurred a range of legal reforms and affected the behaviour of key actors such as bankers and traders, national oil companies and government authorities, and donors and the international community. It also introduces the work carried out by international organisations to enhance fiscal transparency as a means to address corruption vulnerabilities, with a focus on the management of natural resources.

The expanding role of investigative work in exposing corruption

In March 2007, the Comité catholique contre la faim et pour le développement (CCFD), a French civil society organisation (CSO), now known as CCFD-Terre Solidaire, published a ground-breaking report that set out to assess the foreign assets of developing country dictators who had allegedly plundering their nations' wealth and raised the question of western “complacency” towards such ill-gotten gains, or *biens mal acquis* (CCFD-Terre Solidaire, 2007^[11]). The report estimated that 23 national leaders and their families had diverted between USD 100 to 180 billion of national assets, often to Western countries, over previous decades. It also noted that funds had been recovered or frozen in some cases, investigations were underway in others, and cases where there had been no action yet taken but strong suspicions of corruption.

Publication of the CCFD report launched what ultimately became known as the *Biens Mal Acquis*, or BMA, affair, a series of actions and investigations – the first of their kind – that shed light on the role that both source and destination countries play in laundering the proceeds of corruption). Three CSOs – Sherpa, Survie and the Federation of Congolese Diaspora – acted quickly considering the vast volumes of assets that corrupt officials from poor countries had reportedly diverted and invested on French territory. They filed complaints against three African heads of state, accusing them of building personal fortunes in France with public money diverted from their countries. Their legal action had two aims: first, to ensure that France would no longer provides a safe haven for corrupt leaders to launder their stolen assets and second, to help return embezzled money and illicit wealth to those people victimised by the leaders' actions (Chapter 2). The BMA affair and the legal action it represents were the first of their kind and contributed to reveal and sanction the links between PEPs in oil-rich developing countries, IFFs and corruption, and enablers. For this reason, it was selected as a case study for this paper,

The International Consortium of Investigative Journalists (ICIJ), working collaboratively across borders to investigate and expose corruption, has further led some of the most impactful reporting on official and global-scale corruption. The Luanda Leaks exposé is one recent example of transnational investigative journalists in shedding light on grand corruption,³ uncovering evidence that could be used to reveal and address corrupt practices. The central figure was Isabel dos Santos, the billionaire daughter of a former president of Angola, who has described herself as a self-made businesswoman. She had long denied that her estimated USD 2.2 billion fortune is the result of corruption or stems from her relationship to her father, who ruled Angola for almost four decades. In January 2020, however, the ICIJ published reporting from 20 countries using a huge cache of leaked documents – 715 000 emails, charts, contracts, audits and accounts – that alleged that dos Santos and her husband “exploited family ties, shell companies and inside deals” to build a massive fortune of tainted billions (Freedberg et al., 2020^[2]).

Similarly, the Pandora Papers, a trove of millions of documents shared among hundreds of journalists and news organisations worldwide, exposed a shadow financial system benefiting the world's richest and powerful figures. The ICIJ called its collaborative reporting, which was published simultaneously by different media in October 2021, the most extensive investigation in journalism history (ICIJ, 2021^[3]). The revelations were in the same vein as those emerging from the 2016 Panama Papers and 2017 Paradise Papers investigations (ICIJ, 2016^[4]; ICIJ, 2017^[5]). All showed how the equivalent of millions of dollars circulate in a global system of secretive offshore companies that enables crime, corruption, and wrongdoing.

International co-operation and fiscal transparency to address corruption vulnerabilities in oil-rich countries

Governments, civil society, and regulatory and multilateral development agencies have sought to address the sort of far-reaching corruption exposed by the likes of the BMA affair and ICIJ investigations.

International co-operation among source, transit or destination countries for such illicit flows is crucial to identify and recover ill-gotten wealth as assets stolen in such large-scale corruption schemes are often moved to different jurisdictions. Similarly, the international community has backed several initiatives and programmes to enhance transparency and accountability as a means of strengthening systems and addressing identified vulnerabilities to corruption.

The form and content of transparency and accountability initiatives can vary significantly. In the late 1990s, for instance, these took the form of access to information laws. The Extractives Industry Transparency Initiative, established in 2003, was designed to enhance transparency in the extractives sector, with its specific governance challenges and risks of corruption. Other initiatives aimed to improve public finance management as an important tool to hold governments accountable and ensure the good use of public resources, among other objectives.

The promotion and assessment of governance and fiscal transparency also have come to play an important role in IMF reviews and surveillance reports and IMF-supported programmes, and increasingly so over the years. Chapters 3 and 4 examine the IMF's development and use of fiscal transparency tools — in particular, the FTC and its Pillar IV on management of natural resources — as a vehicle for fighting corruption with a focus on oil-rich developing countries.

2 From investigative work to legal processes and lasting repercussions: The *Biens Mal Acquis* affair

Grand corruption often involves politically exposed persons (PEPs)⁴ with proximity with political power and access to key resources and is facilitated by a network of enablers. Efforts to counter and prosecute it go back many years, as do efforts to return corruption proceeds. In 1986, the Philippines was the first country to initiate a restitution process, but it only yielded results many years later (2003) and proved to be a very complex process (UN/World Bank, 2007^[6]). More recently, several cases have revolved around the investigation and/or restitution of the proceeds of corruption targeting PEPs and their involvement in schemes of grand corruption. These include, for example, the corruption scandals known as the *Biens Mal Acquis* (BMA) affair and the Luanda Leaks case, as well as the Abacha funds and restitution process between Switzerland and Nigeria.

To inform the Anti-Corruption Task Team's (ACTT) programme of work on the risks of IFFs in oil commodity trading, this chapter focuses on understanding the characteristics and implications of the BMA cases, including wide-ranging investigations and pioneering efforts by destination country courts to freeze and confiscate illicit wealth and seek their restitution to the oil-producing countries where the corruption occurred. It examines the BMA affair as an illustration of how determined civil society organisations (CSOs) with the support of lawyers and investigative work, overcame considerable political, judicial and legal resistance and roadblocks to bring about the prosecution of high-ranking foreign officials.

The legal struggle: Launching judicial investigations of grand corruption

As discussed in Chapter 1, in March 2007, shortly after the initial investigative work and publication of the corruption allegations that became known as the BMA affair, three Paris-based civil society organisations (CSOs) filed a criminal complaint against three African heads of state: Denis Sassou Nguesso of Congo, Omar Bongo of Gabon and Teodoro Obiang of Equatorial Guinea, and close relatives. In the complaint, they argued that assets held by these leaders and their relatives in France “could not have reasonably been acquired through their salaries and emoluments alone” and that, “given the existence of serious suspicions of misappropriation of public funds surrounding these same individuals, these property investments likely involved money laundering” (Perdriel-Vaissière, 2017^[7]). Although the investigation that followed corroborated some of the allegations and revealed the existence of other assets, the Paris prosecutor's office dropped the charges in November 2007 on the grounds of insufficient proof (Perdriel-Vaissière, 2017^[7]).

In 2008, Sherpa, joined by Transparency International France and a Gabonese citizen, sought to reopen the judicial investigation. After a string of contradictory decisions by various investigating judges,

prosecutors and the appellate court, the French Court of Cassation announced in November 2010 that the three heads of state and some of their relatives could be investigated. The appointment of an investigating judge to investigate whether their French assets were the proceeds of corruption marked the formal beginning of what would become the long-running and ground-breaking BMA cases.

Biens Mal Acquis affair: Years of litigation and a historic conviction

An extended series of searches, asset seizures, court decisions and trials followed this historic decision to recognise the legal standing of a civil society association, in this case Transparency International France, to introduce corruption proceedings. Three separate criminal cases emerged in the BMA affair, corresponding to the three African countries, over the seven-year period from late 2010 through October 2017, culminating in the conviction of Teodorin Obiang, son of the Equatorial Guinea president, on charges of money laundering, embezzlement, and corruption. It was the first time a French court convicted a sitting high-ranking foreign official on such charges.

In January 2020, a French appellate court upheld the conviction and the confiscation of EUR 150 million worth of assets on French territory that were acquired with public money stolen from Equatorial Guinea. Obiang's subsequent appeals to the International Court of Justice and the French Supreme Court, including a claim that a luxury building on Avenue Foch in Paris was shielded by diplomatic immunity, were rejected in July 2021 (Transparency International France, 2021^[8]). Box 2.1 summarises key events in the investigation and prosecution of the BMA corruption cases.

Box 2.1. Legal milestones in the *Biens Mal Acquis* cases

The political elites of three African countries were at the centre of the BMA corruption cases, which focused on allegations that the heads of state, their relatives and their associates laundered their ill-gotten gains activity on French territory. This timeline highlights the major events in the three investigations.

Equatorial Guinea

- 28 September 2011: Seizure of 11 prestige cars owned by the Obiang Nguema family following the search of a building belonging to a member of the family's entourage.
- 13 July 2012: International arrest warrant issued for Teodoro "Teodorin" Nguema Obiang Mangué, a vice-president of Equatorial Guinea and son of its president, who had refused to respond to a summons from French magistrates.
- 19 July 2012: Seizure of a Paris mansion owned by the younger Obiang and estimated to be worth between EUR 100 and 150 million.
- 18 March 2014: Obiang indicted on charges of laundering and embezzlement of public funds, misuse of corporate assets, and breach of trust.
- 15 December 2015: Court of Cassation dismisses Obiang's request to cancel his indictment and claim of immunity as vice-president since 2012.
- 19 June 2017: Trial of Obiang begins.
- 27 October 2017: Obiang is convicted in a historic first; sentenced to three years in prison; fined EUR 30 million, though the fine is suspended; and all his property seized on French territory is confiscated.
- 28 July 2021: France's highest court, the *Cour de Cassation*, rejects Obiang's appeal, upholding his conviction and confirming the confiscation by the French state of EUR 150 million of his assets and the fine.

Gabon

- 22 April 2016: Seizure of real estate in Paris and Nice belonging to the family of Gabon's president, Ali Bongo.
- 30 August 2017: Investigation of Bongo family fortune in France is closed and no indictment is brought.
- 10 February 2020: Indictment for complicity in laundering of public funds and corruption of Jean-François Meyer, a long-time lawyer of Omar Bongo, Gabon's former president and father of Ali Bongo.

Congo

- 22 April 2016: Confiscation of two Paris apartments in Paris owned in the name of Antoinette Sassou Nguesso, the wife of Congo President Denis Sassou Nguesso.
- 13 July 2017: Edgar Nguesso and his mother, Catherine Ignanga, respectively the nephew and former sister-in-law of the president, are indicted on charges of laundering and embezzlement of public funds.

Source: Author's summary of key actions based on information provided in *Agence France Presse* (2017^[9]), "Les principales étapes de l'affaire des 'biens mal acquis'", https://www.lepoint.fr/societe/les-principales-etapes-de-l-affaire-des-biens-mal-acquis-27-10-2017-2167890_23.php; and Transparency International France (2021^[8]), *Biens mal acquis: Les dates clefs pour comprendre* (webpage), <https://transparency-france.org/aider-victimes-de-corrupcion/biens-mal-acquis/dates-clefs/#.YV7qytpByUk>.

Enabling factors for the *Biens Mal Acquis* investigations and trials

The legal actions emanating from the BMA affair were examples of how the determination and hard work of civil society groups can overcome formidable political, judicial, and legal roadblocks and resistance and pave the way for prosecution of transnational grand corruption. Several factors specific to the French legal system as well as heightened international attention to corruption scandals were crucial to seeing the litigation through to a conclusion.

A key element was that French law allows a CSO to petition to join a legal proceeding as a civil party (Perdriel-Vaissière, 2017^[7]). A civil party is defined as an entity or person who has suffered damage caused by an offence, and civil party status allows a complainant to claim damages. Thus, once ruled they had standing to file their criminal complaint, Transparency International France and the other CSOs involved could exercise their rights as civil parties to actively, albeit indirectly, participate in the investigative process.⁵ Moreover, obtaining this status proved essential to overcoming the initial reluctance of French prosecutors to pursue the cases. A second important factor in the BMA judicial process was that French law considers money laundering a crime in France even if the conduct that generated the illicit wealth occurred elsewhere — what Perdriel-Vaissière (2017^[10]), in a report for Open Society Foundations, called the “autonomy of the offence of money laundering”.

Third, the CSOs also managed to keep a media spotlight on the cases that helped focus public attention on the nature and magnitude of the allegedly stolen assets that were at the centre of the investigation. The delaying tactics and “appearance of arrogance” on the part of some defendants also certainly “encouraged the French magistrates ... to demonstrate tenacity”, according to Perdriel-Vaissière (2017^[7]). These factors were especially important given that the intense political pressure from some quarters to drop the cases.

Furthermore, the BMA affair did not happen in a vacuum, but in parallel to significant investigative work. Over the course of the litigation in France, other major exposés helped shed light on and fight transnational corruption. Among these were Panama Papers revelations about the offshore finance industry published by the International Consortium of Investigative Journalists (ICIJ) (2016^[4]); the Paradise Papers leaks investigation into the secret “financial hideaways” of the global elite, also by the ICIJ (2017^[5]); and numerous additional investigations by CSOs. Complementary investigative journalism related to Congo includes two reports by the Berne Declaration, now called Public Eye. The first alleged that Congolese oil

money was being squandered (Berne Declaration, 2015^[11]) and a second focused on Gunvor, the Swiss commodity trading company, and its activities in Congo (Public Eye, 2017^[12]). More recently, Global Witness (2020^[13]) published a report entitled *Rigged: Where has Republic of Congo's Oil Money Gone?*

Lasting repercussions for France of the *Biens Mal Acquis* affair

The BMA affair and the momentum it generated around transnational investigative journalism to fight corruption led to multiple direct and indirect consequences between 2007 and 2021, not only on investigative and judicial anti-corruption processes but also on a broad range of actors. This subsection assesses the impact for France – as destination country – of the affair, highlighting the potential ramifications of investigative work on internal legal processes.

The BMA cases prompted several legislative and other changes in France (Perdriel-Vaissière, 2017^[7]). First, Law 2013-117 granted anti-corruption CSOs to claim the status of *injured parties* before the courts, a change codified to combat tax fraud and serious economic and financial crime,⁶ that allows them to file corruption complaints. Second, the BMA affair laid the groundwork for criminal investigation and prosecution of *sitting* foreign public officials suspected of corruption. Third, it strengthened the *independence* of the French justice system with the adoption of the Law 2013-669,⁷ prohibiting the minister of justice from instructing public prosecutors on the handling of individual cases. This law is a response to the judicial and political interference to block the BMA cases.

The BMA affair resulted in a prison sentence and fine for a senior foreign official for money laundering and the full confiscation of the official's assets on French territory, yet, restitution of ill-gotten gains remains a challenge and French CSOs have called on France to adopt concrete measures to put recently adopted international initiatives into action.⁸ In response, the French parliament adopted in August 2021 legislation that would create a mechanism for the restitution of ill-gotten gains and stolen assets (Government of France, 2021^[14]), to be complemented by the Finance Law. With this, France joins other countries that have modified their laws on stolen asset recovery. One prominent example is Switzerland, which in 2015 adopted a law on assets of illicit origin⁹ (Transparency International France, 2017^[15]). Targeting foreign PEPs investing assets in the Swiss financial market, the measure permits the freezing of such assets. Individuals who own frozen assets may be asked for proof of their origin. Swiss authorities have implemented the law on several occasions including against the former presidents of Egypt, Tunisia, and Ukraine (Switzerland Federal Department of Foreign Affairs, 2022^[16]).

Building on the first three BMA cases, French authorities launched several other corruption investigations of high-profile foreign figures, seeking the return of their allegedly ill-gotten gains to the countries of origin. One result was the May 2020 restitution by France of proceeds of corruption to Uzbekistan. Another was the June 2020 conviction on charges of money laundering and misappropriation of public funds in Syria of Rifaat al-Assad, an uncle of Syrian President Bashar al-Assad, who was sentenced in absentia to four years in prison and had his assets on French territory confiscated. Rifaat Al Assad is the second former foreign leader to be definitively sentenced by the French justice system (Transparency International, 2022^[17]). An investigation was also opened in France in November 2018 into the acquisition of real estate in France by the Djibouti's president, Ismael Omar Guelleh, and his entourage. Latest developments in the investigation include a March 2022 police search of the Paris flat of the daughter of the Djiboutian president.

National and global responses to transnational corruption investigations

The BMA cases created an enabling environment for legal changes in countries beyond France, spurring similar investigations and affecting donors, banks and traders, CSOs, and the countries of origin of

proceeds of corruption. In October 2018, for example, the Paris-based non-governmental organisation Sherpa requested that an investigation of 20 politicians and high-ranking officials in Africa be opened in Canada, and corruption cases against foreign figures have been opened in Monaco, Portugal, Spain, Switzerland, and the United Kingdom.

Role and responsibility of transit and destination countries

The BMA and other corruption cases have also shed light on the role and responsibility of countries in facilitating corruption and permitting its proceeds to be concealed. The BMA affair not only led to the investigation and prosecution of individuals for corrupt practices and money laundering outside their countries of origin. It also exposed some of the dynamics behind transnational corruption and illicit financial flows (IFFs), including the role of enablers and intermediaries and poor due diligence systems. Some progress has been made in fighting tax havens and closing legal loopholes, although this remains a slow process. For example, the European Union's Fourth and Fifth Directives on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, adopted in 2015 and 2018, updated requirements in relation to PEPs and transparency of beneficial ownership (European Union, 2015^[18]; European Union, 2018^[19]). New requirements include keeping an up-to-date list of functions that qualify as prominent public functions, to facilitate the understanding and identification of individuals falling under the PEP status, as well as setting up national beneficial ownership registers for corporate and other legal entities.

Some countries have developed new tools to investigate potentially illicit wealth. Since 2018, for instance, courts in the United Kingdom have the power to issue unexplained wealth orders (UWOs) that require the owner of suspicious wealth to prove it was acquired lawfully or risk having the assets seized and repatriated, with the accused bearing the burden of proof. If the person subject to a UWO fails to respond, the assets are presumed to be or to have been purchased with illegitimate funds, and a civil proceeding can be initiated to recover them (Transparency International UK, 2017^[20]).

However, many challenges, including the need for enhanced policy coherence to fight transnational corruption, have yet to be addressed. The 2007 CCFD report with its initial BMA revelations argued that transit and destination countries bear substantial responsibility in enabling transnational corruption, while noting the opacity of information and lack of judicial co-operation. As further highlighted by recent ICIJ revelations beginning with the Panama Papers, countries in the global North may function as offshore havens where corrupt individuals can safeguard and store their assets.

Policy coherence in fighting corruption remains a challenge despite growing awareness of the transnational dimension of corruption and role of multiple enablers in sustaining IFFs and despite the increased focus on issues of beneficial ownership transparency, the fight against bank secrecy, and the push for tax transparency and exchange of information, among others.

Role of banks and traders and related consequences

Prosecutions and investigations into transnational corruption have also had consequences for some banks and traders, as illustrated by the Congo BMA case. Banks and traders are increasingly seen as playing an active role in deals and investments in oil-producing developing countries associated with scandals and illicit enrichment by PEPs. Prosecutions have created bad publicity and reputational crises for banks as well as a focus on stronger banking sector regulation. For example, the revision of the Financial Action Task Force (FATF) Recommendations in 2012 and the introduction of a FATF Guidance on PEPs in 2013¹⁰ illustrate how the identification of existing limitations has informed the regulatory framework and complemented international norms and conventions against money laundering and corruption. Global measures against dirty money respond to the objective of fighting terrorism and, increasingly, are influenced by the recognition of identified deficiencies in the implementation of regulations and due

diligence and of the influence of enablers who act as intermediaries between PEPs and private sector entities.

Investigative journalism has contributed to spur trials and convictions of several banks and traders in recent years. These have highlighted the involvement of corrupt PEPs in major mining and oil deals and the role played by banks, audit companies, commodity traders and buyers. While it is difficult to establish a causal relationship between events, these revelations, informed by investigative journalistic work and research by CSOs, have undoubtedly triggered and fed into several recent trials and convictions. Examples include a report by Public Eye (2017^[12]) on the activities of Switzerland-based trading company Gunvor in Congo and a report on commodity-trader corruption by Global Witness and Public Eye (2018^[21]).

In October 2019, an extended investigation by Swiss federal prosecutors ended with the conviction of oil trader, Gunvor Group, on charges of facilitating corruption in Congo and Côte d'Ivoire, and ordered to pay a fine of CHF 4 million (Swiss francs) and CHF 90 million in compensation for illegally obtained profits. The company was “convicted of failing to take all the organisational measures that were reasonable and necessary to prevent its employees and agents from bribing public officials in order to gain access to the petroleum markets” in Congo and the Côte d'Ivoire, the first time a major trading group was found guilty of these charges in Switzerland (Office of the Attorney General of Switzerland, 2019^[22]).

Similarly, in May 2020, French prosecutors pressed charges against BNP Paribas for alleged money laundering and misappropriation of public funds (RFI, 2021^[23]). In the BNP case, which stemmed from the BMA revelations, the bank was accused of failing in its duty to undertake due diligence on the financial transfers of former Gabon president, Omar Bongo. According to investigators, friends and family of Bongo family had paid an estimated EUR 32 million to acquire 12 properties in Paris and Nice since the 1990s and used the Gabonese subsidiary of a French interior design company to pass EUR 52 million to that company's BNP account in France between 1997 and 2009 (RFI, 2021^[23]). The investigation also targeted family properties of Denis Sassou Nguesso, president of the Republic of the Congo.

Parallels can be drawn with the December 2020 deferred prosecution agreement between federal prosecutors in New York and Vitol Inc. that required the company to pay USD 135 million to resolve a foreign bribery case; and the suit filed at the end of November 2020 by the Brazilian Federal Prosecutor against Trafigura seeking damages for alleged corruption.

Commitment to address the role of enablers

These allegations have underlined the facilitator role played by many intermediaries and enablers, which in turn has prompted some banks and traders to commit to reducing their use of intermediaries. In July 2019, in the wake of a series of corruption investigations and charges involving middlemen, Trafigura announced it would end all agreements with third parties providing business development services by October of that year. The announcement can be seen as the company's bid to pre-empt tougher regulation of industry practices (Hume, 2019^[24]). Other trading companies soon made similar announcements, signalling their recognition that resorting to so-called intermediaries and enablers poses a high risk of exposing them to corrupt activities. Exposés by investigative journalists and a string of prosecutions — alongside a middleman's agreement to testify against top trading company executives in the grand corruption case in Brazil in late 2019 — contributed to these decisions to change deal-making practices (Brito and Slattery, 2019^[25]).

The scandals and unfavourable publicity resulting from these cases have affected the reputations of companies and traders and, potentially, their business. While causality is not easily established, there is ground to believe that this has made the industry more aware of the importance of safeguarding the integrity of their operations. Several industry actors have taken steps to improve their practices, including by increasing their involvement in transaction transparency initiatives, for example. Engagement with the Extractive Industries Transparency Initiative (EITI) has increased, with companies disclosing information

related to the purchase of oil in countries where they operate to enhance transparency, reporting and thereby integrity in their operations. Trafigura was the first independent commodity trading company to formally declare its support to the EITI in November 2014.

Strong signal to fighting corruption

The BMA cases also sent a strong signal to corrupt leaders worldwide that they are no longer immune from prosecution. Trials around corruption issues have helped put pressure on individuals to align their conduct to expected behaviour. As reported by (Lattier, 2015^[26]), the closure without indictment of the Gabon BMA case in August 2017 can be explained, at least partially, to the attention and pressure put on those under investigation: William Bourdon, a lawyer for Transparency International France and president of Sherpa, mentions that if it had not been for the corruption investigation inspired by the BMA revelations, Gabon President Ali Bongo would not have announced his hand over of his part of his father inheritance — notably, two properties located in France — to the state of Gabon (Lattier, 2015^[26]). Bongo made the declaration even as his lawyers continued to argue that he did not own anything on French territory.

Unintended consequences as considerations for moving forward

Progressive disengagement in transparency efforts

As is commonly the case with public policy, the BMA affair and similar ill-gotten gains cases had unintended consequences, including on transparency initiatives in source countries. In Congo, for example, the work of investigative journalists and the opening of court cases worked against the initial willingness of authorities to enhance the transparency of given transactions (especially in corruption-prone sectors), lowering the government's incentive to report more than the minimum in terms of oil sales disclosures. Congo initially participated proactively in EITI-related work, submitting quarterly reports and disclosures in 2003 of crude oil sales to commodity traders and becoming an EITI candidate in 2007, but it appears from our research and personal communications with key stakeholders, that the country became less active and innovative between 2015 and 2017.

In June 2018, the EITI Board noted that despite efforts to publish quarterly reports providing detailed information on the sale of oil by the Congo national oil company in the period 2004 to 2014, these reports were no longer in the public domain despite their relevance in terms of compliance with aspects of the EITI Standard and progress towards improved transparency and governance (Extractive Industries Transparency Initiative, 2018^[27]).

Here again, dynamics are neither linear nor exclusive of a wider set of actors. However, given the strong linkages between the PEPs involved in the Congo BMA case, their senior positions in the leadership and management of the country's extractive resources, and a more distant engagement of Congo with trade transaction initiatives over the last decade, the BMA investigations into alleged corrupt practices in the sector can indeed be considered as having contributed, in source countries, to this reduced interest and notable withdrawal.

Shift in business location

Another unintended consequence of transnational investigations to expose and sanction corrupt practices is the shift of businesses, including “top-range banks” and commodity traders, to new and less regulated jurisdictions (Soares De Oliveira, 2020^[28]). Corruption and its proceeds are being relocated rather than dismantled. For example, Isabel dos Santos reportedly changed her residence and that of her companies to Dubai and its more accommodating financial services just days after her assets were frozen in several

countries. According to Soares de Oliveira (2020^[28]), she is just one of several African oligarchs to have moved assets to Dubai to escape legal troubles.

Shaxson (2016^[29]) refers to a shift away from traditional onshore financial centres and offshore havens in OECD member countries and British territories towards centres in Asia and elsewhere that require less transparency and offer greater discretion. Corrupt elites find the same services (e.g. legal, financing and accounting services) – and service providers – in Dubai, Singapore and Hong Kong that they use in London, Lisbon, Paris and Zurich, and these providers are often the first to suggest relocation to “more amenable contexts and continued relationships on new ground” (Soares de Oliveira, 2007^[30]).

Risky business and reprisals

Revealing and investigating aspects of the BMA cases did not come free of risks, and the security of those involved soon emerged as a key concern. Two specific incidents illustrate the backlash against CSOs investigating in the early phases of the BMA affair. In addition to threats and disinformation campaigns targeting leaders of organisations that filed corruption complaints, several individuals were arrested and detained in 2008 in Libreville, Gabon on charges of attempting to destabilise the government. Similarly, in 2009, a Congolese blogger who filed a corruption complaint against government officials died soon after in a suspicious fire that destroyed his Brazzaville home (Sherpa, 2017^[10]). More recently, in a different but similar case, the death of Malta anti-corruption journalist, Daphne Caruana Galizia, raised concerns on the security of those uncovering incidents of corruption (Jones, 2022^[31]).

Reprisals are not limited to those investigating allegations of corruption. The arrest and questioning, in December 2016, of five employees of the Société Générale Bank of Equatorial Guinea by the government of Equatorial Guinea, illustrates that involvement – or alleged involvement – in revealing suspected incidents of corruption has led to attempts of intimidation and reprisal. In this instance, the employees were questioned on accusations they had provided secret banking information to the French investigators in relation to the opening of Obiang’s trial in January 2017.

Lengthy and resource-intensive processes

Another important issue for those engaging in transnational corruption litigation is the lengthy and potentially high resource-intensive process that such judicial proceedings entail. The CSOs involved in the BMA affair managed the financial dimension without major difficulty as the overall legal costs remained manageable for two main reasons. First, access to the courts and investigative magistrates in the French legal system is relatively low and second, many of the lawyers working with the CSOs provided their services pro bono (Sherpa, 2017^[10]). However, this may not be the experience of CSOs everywhere, and in other jurisdictions, legal processes could well result in financial costs being significantly higher. The BMA affair appears to have had a singular, clear, and direct impact on the fight against corruption and on the freezing and restitution of stolen assets over the past decade. The impact on specific actors and processes is likely the result of a confluence of different initiatives and actions, but one where the BMA affair inspired broader investigations, trials, and sanctions, and helped create momentum for tackling transnational corruption and IFFs.

Nonetheless, this momentum could be leveraged further. Exposing grand corruption is an important initial step but further addressing grand corruption and illicit finance can built on complementary actions. Investigative journalism has succeeded in focusing attention on the modus operandi of corruption in a global world and in analysing specific cases and suspected fraudulent transactions. To move from the identification of specific incidents to the fostering of more systemic change and addressing corruption vulnerabilities at their core, efforts by investigative journalists could usefully interplay with other anti-corruption initiatives, to mutually reinforce and leverage one another. The next chapters analyse the International Monetary Fund anti-corruption engagements and if and how these have or could be reinforced by other anti-corruption measures.

3

The evolution of the International Monetary Fund's anti-corruption and fiscal transparency efforts

Investigative journalists and civil society organisations (CSOs) have helped expose grand corruption and how corrupt officials and their families have laundered their illicit wealth. These high-profile scandals have inspired changes in national laws and procedures to allow prosecutors to more effectively identify, seize and ultimately return the proceeds of corruption to their countries of origin. They have also revealed weaknesses in national transparency systems, the adverse impact that systemic corruption can have on countries' economic growth, and the specific challenges of managing natural resource revenues. On all such issues, the International Monetary Fund (IMF) has been expanding its focus on in its engagement in member countries.

This chapter analyses the nature, evolution, and role of the IMF's fiscal transparency efforts and how these can complement – and be complemented by – transnational investigative journalism and civil society efforts to enhance integrity and fight corruption in developing oil-rich countries. It focuses on IMF efforts to strengthen governance and curb opportunities for corrupt practices in oil-producing developing countries. The chapter begins with an overview of governance and anti-corruption initiatives including the Fiscal Transparency Code (FTC) and then looks at the evolution of such IMF policies over the last 25 years, and the factors that have driven these changes.

An evolving Fund approach to governance and fighting corruption

The IMF (the Fund) introduced several initiatives on governance and fighting corruption over the past 25 years. The initial 1997 Guidance Note on the IMF's role in good governance was developed as a response to an increasingly globalised world where economies were more and more integrated and “sound macroeconomic policies, transparent, accountable and effective public institutions, and adherence to the rule of law ... rather than geopolitical alliances ... became prerequisites for attracting foreign direct investment” (International Monetary Fund, 2017^[32]).

Following reflections on the Fund's role in helping developing and transition countries deal with governance and corruption issues, the 1997 Note sought to introduce a more systematic IMF approach to these issues.¹¹ The IMF has developed and adapted specific tools and modalities to guide its governance and anti-corruption strategies, with these evolving significantly over time. Some of the contextual factors that have influenced IMF engagement and policy evolutions are internal to the organisation, i.e., relating to Internal learning processes and stocktaking exercises. Others are more external in nature and include financial crises and revealed shortcomings in the financial reporting of both public and private sectors, critical assessments by key stakeholders of IMF activities, and revelations by investigative journalism on the scope and nature of corrupt practices within and between countries.

The IMF Executive Board reviewed the 1997 Guidance Note in 2001 and 2004, making no modifications.¹² But in 2017, a new review was done, where the International Monetary and Financial Committee called on the IMF to strengthen its governance and anti-corruption work. It required updating the Note to: (i) better tackle the sources and channels of corruption, (ii) address the adverse impact that systemic corruption can have on inclusive sustainable growth, and (iii) deal with these issues more openly.

The review called for a renewed framework to “promote more systematic, effective, and candid engagement with member countries regarding those governance vulnerabilities, including corruption, that are judged to be macro-economically critical” (International Monetary Fund, 2018_[33]). It further concluded that while corruption issues are covered in IMF staff reports and activities, this coverage is uneven and has the potential to gain in frankness. It encouraged addressing more directly the supply side and concealment of corruption, inviting IMF members to ensure their laws criminalise bribery of foreign officials (supply side) and that their country makes it difficult to hide proceeds of corruption (concealment).¹³

IMF fiscal transparency engagement: Origin, adjustments, and recent addition to anchor the issue more strongly in the Fund’s work

In the late 1990s, the IMF placed fiscal transparency at the core of its efforts to strengthen governance and address corruption risk. The Fund defines fiscal transparency as “the comprehensiveness, clarity, reliability, timeliness, and relevance of public reporting on the past, present, and future state of public finances” (International Monetary Fund, 2022_[34]). With it, the IMF seeks to support governments with an accurate picture of their finances — not only to inform policy decisions, but also to supply major stakeholders (i.e., legislatures, markets and citizens) the information necessary to hold governments accountable for their fiscal performance and use of public resources.

The IMF’s fiscal transparency initiatives have evolved over the years:

- Adoption in 1998 of a Code of Good Practices in Fiscal Transparency and introduction of voluntary assessments of fiscal transparency practices for member countries.¹⁴ The Asian financial crisis and shortcomings in terms of financial management and reporting served as a push factor for the IMF to focus on promoting fiscal transparency.
- In 2005, the first major adjustment occurred with the development of a Guide on Resource Revenue Transparency to reflect the specific challenges faced by countries that derive a significant share of revenue from natural resources. The guide provided an overview of good practice approaches to the transparency of resource revenue management and was updated in 2007 to include promising transparency practices such as project-level disclosure of resource revenues and the publication of contracts.
- The Code itself was updated in 2007 to reflect emerging good practices around its original four pillars: (i) clarity of roles and responsibilities, (ii) open budget processes, (iii) public availability of information, and (iv) assurances of integrity. The accompanying manual was also revised.

Factors and events behind the 2012 review of the Fund’s fiscal transparency tools

A combination of factors and events led to a fresh review of the IMF’s fiscal transparency tools in 2012.

- **The 2008 global financial crisis**

A significant influence was the 2008 global financial crisis. The emergence of previously unrecorded deficits and debts, for example, highlighted that overall, reporting by governments of their fiscal operations and finances was incomplete. The crisis also demonstrated that countries tended to underestimate risks to their fiscal position and that the need for fiscal adjustment was pushing countries to engage in activities that further affected their finances.

- **Assessment of the IMF and World Bank extractive industries transparency work**

In 2008, an external critical assessment of the IMF and World Bank extractive industries transparency work signalled similar issues. The report by the Bank Information Center and Global Witness (2008^[35]) concluded that efforts by the two institutions to raise the issue of transparency in resource-rich countries were “neither consistent across countries nor comprehensive” and criticised them for focusing on the disclosure of revenues rather than promoting contract transparency and ensuring the active participation of CSOs.

- **Creation of a topical trust fund and discussions on the management of natural resources**

The IMF's fiscal transparency work strengthened its focus on resource revenue management in the past decade. Its launch of a multi-donor topical trust fund dedicated to the issue in 2011 increased its technical assistance to support the management of natural resource wealth, enhanced understanding of its role and importance, and facilitated its full inclusion in IMF fiscal transparency efforts.

In early 2012, the IMF organised a conference in Kinshasa on the management of natural resources in sub-Saharan Africa to reflect on how best to use natural resources to boost living standards.¹⁵ Participants flagged that oil, mining and other extractive industries “contribute relatively modestly to public revenues” and that appropriate tax policies, fair and more equitable contracts, and strengthened revenue administration are needed to effectively manage natural resources wealth (International Monetary Fund, 2012^[36]).

Natural resource revenue management as a new and distinct core element

Natural resource revenue management was included in the 2014 revision of the FTC (Box 3.1). At the same time, the IMF adopted a new Fiscal Transparency Evaluation (FTE) to replace the voluntary fiscal transparency assessments. FTEs assess country practices against the FTC, support the identification of strengths and weaknesses in transparency practices, and make specific recommendations for improvement. The revised FTC emphasises the importance of fiscal risk management, with Pillar III devoted entirely to analysing and managing fiscal risks. Following a pilot, a new Pillar IV on natural resource revenue management was included in the 2019 update of the FTC.

Box 3.1. The 2014 Fiscal Transparency Code

The FTC revised in 2014 emphasises the need to focus on the full extent of government operations and the risks they entail; less on processes and more on outputs, particularly the quality of the information published for evaluating the degree of effective fiscal transparency; and on countries' different institutional capacities, with a distinction between basic, good and advanced levels¹ to allow for sequenced, progressive compliance with international standards.² This table summarises the four new pillars of the FTC.

Table 3.1. Pillars and focus of the FTC

Pillar I. Fiscal reporting	Fiscal reports should provide a comprehensive, relevant, timely and reliable overview of the government's financial position and performance
Pillar II. Fiscal forecasting and budgeting	Budgets and their underlying fiscal forecasts should provide a clear statement of the government's budgetary objectives and policy intentions and comprehensive, timely and credible projections of the evolution of public finances
Pillar III. Fiscal risk analysis and management	Governments should disclose, analyse and manage risks to public finances and ensure effective co-ordination of fiscal decision making across the public sector
Pillar IV. Natural resource revenue management (finalised in 2019)	Fiscal risk mitigation efforts should focus on resource rights and ownership, resource revenue mobilisation, resource revenue utilisation, and resource activity reporting and disclosure

Notes:

1. In the revised FTC, the IMF supports a gradual, graduated approach to fiscal transparency, recognising country practices and institutional capacities differ. A distinction is made between three levels: (i) basic, which corresponds to a minimum standard to be achievable by all; (ii) good, an intermediate goal with stronger institutional capacities needed; and (iii) advanced, reflecting international standards and current state-of-the-art policies and practices in the field.
2. By adopting a sequenced path to reform, the revised FTC would allow for guidance, support and surveillance around standards categorised in three groups: (i) long-established international standards, (ii) more recent norms and (iii) emerging norms such as beneficial ownership of resources rights, for example.

Source: Author based on International Monetary Fund (2014^[37]), *The Fiscal Transparency Code*, <https://blog-pfm.imf.org/files/ft-code.pdf>.

A Fiscal Transparency Handbook, released in 2018 to accompany the 2014 FTC, reflects on the experience with FTEs and lessons learned and provides detailed guidance on how to implement the FTC's principles and practices. Volume I of the Handbook covers the first three pillars of the FTC, defining each of the pillar's key dimensions and principles; describes recent trends; provides examples and guidance for of basic, good, and advanced practices; and specifies the measurement indicators for effective monitoring and enforcement.

A second volume of the Handbook – to focus on Pillar IV – is still pending. This complementary volume will cover areas such as open contracting procedures for license allocation; beneficial ownership of companies holding licenses; reporting on payments to governments at the project level; transparency in commodity trading and recognition that disclosing payments by traders is well within reach of countries and companies; publication of environmental and social impact assessments; and other existing standards and requirements on state-owned natural resource companies, etc. These elements are meant to correct some of the weaknesses and shortcomings noted in countries' fiscal transparency practices. There is scope for Pillar IV to address shortcomings in fiscal transparency efforts (see Chapter 4). As noted by Woodroffe (2019^[38]), for example, "the importance of open contracting procedures for license allocation, through mechanisms like published qualification criteria, lists of applicants, justifications for decisions and registers of license holders" and "publication of beneficial owners of companies holding licenses, including the chain of intermediaries connecting these owners to the license holder" could contribute to prevent PEPs from undermining fair licensing processes by hiding their identity in procurement processes.

4 Governance and fiscal transparency initiatives in action: The cases of Angola and Congo

As seen in Chapter 3, the International Monetary Fund (IMF) has continually adapted its policies on governance and fiscal transparency to support the management of non-renewable natural resources more efficiently for equitable and sustainable growth. The impact of these efforts in oil-rich developing countries varies according to a range of factors. These include the country's fiscal and economic situation, incentives that influence a government's performance and engagement, and resources and expertise that the IMF can bring to bear on these issues. External forces — for instance, pressure from outside advocacy groups, corruption scandals, and parallel transparency efforts — also affect IMF fiscal transparency efforts. While the IMF Fiscal Transparency Code (FTC) is designed to address corruption vulnerabilities and integrity risks, leveraging this potential can be challenging, particularly in terms of monitoring and surveillance activities.

This chapter examines how the IMF has engaged on governance and fiscal transparency in practice and the challenges encountered. It focuses on IMF operations in Congo and Angola and identifies factors that have helped or hindered progress in these areas. The two case studies make it clear that, even in the face of common challenges, country contexts, incentives, and capabilities influence the role and impact of the IMF.

Transparent management of oil revenues: The Fund's engagement in Congo

Congo is a resource-rich fragile economy. Oil revenue accounts for about one-third of GDP, two-thirds of fiscal revenues and over 80% of exports of goods (World Bank, 2018^[39]), but successive governments have had limited success in using these oil resources to significantly advance the welfare of the Congolese people (International Monetary Fund, 2006^[40]). Moreover, extreme poverty rates in the country have been increasing since 2016 due to the decline in oil prices and, more recently, the impact of the COVID-19 crisis.

Congo has many of the hallmarks of a resource-dependent developing country under economic stress and subject to poor governance, episodic conflict, and perceptions of corruption at the highest levels of government where sometimes unscrupulous actors exploit the poor management and regulation of the extractives sector to their advantage. Although issues of institutional and economic governance, fiscal transparency and the management of natural resource revenues are central to the country's development challenges, both the government and international stakeholders have addressed these unevenly and with some discontinuity over the years.

Over the last two decades, the IMF has provided technical assistance and concessionary lending to Congo with improvements in transparency and multi-stakeholder participation in the management and oversight of the oil sector high on its agenda and dialogue with the country's authorities. Established as prior actions

and structural benchmarks, these elements were core to the staff-monitored programmes¹⁶ (SMPs) implemented in the country from 2001 to 2004 (Bank Information Center and Global Witness, 2008_[35]).

Corruption and management of the oil sector were also key to the three-year arrangement under the Poverty Reduction and Growth Facility (PRGF) agreed late 2004. This USD 84.4 million programme focused on structural reforms of the oil sector and more transparent management of the national oil company (Société Nationale des Pétroles du Congo, or SNPC), and of its revenue collection systems. Among other things, the arrangement provided for successive audits of the SNPC, quarterly certifications by an independent international audit firm of monies received and transferred to the treasury, and the publication of audit reports on the website of the finance ministry.

Early approaches failed to sustain integrity reforms in Congo

Overall, the IMF's coverage of governance and corruption vulnerabilities has been uneven in Congo. Following agreement of the PRGF arrangement, concerns were raised with regards to governance and fiscal transparency, particularly in the oil sector. Serious discrepancies emerged between funds received and transferred by SNPC systemic problems were revealed with the marketing of state oil. By 2006, in the second year of the PRGF, the programme was off track with Congo failing to meet key structural and fiscal requirements.

In 2007, the IMF mobilised an SMP to help get the PRGF programme back on track. Some progress was made but deficiencies remained, including the non-implementation of structural measures to bolster transparency and governance.¹⁷ IMF flagged several shortcomings (International Monetary Fund, 2008_[41]), including authorities failing to implement several public financial measures (i.e. publication of bids for government procurement contracts; centralisation of information on all public revenues and execution of public payments by the treasury; and limitation of emergency payment procedures to emergency situations). Monitoring was also affected as authorities failed to provide data in a timely manner.

Despite these drawbacks, a new PRGF programme was launched in 2008-11 to support the government's economic programme. It included structural reforms to strengthen public financial management, improve the performance of state-owned enterprises, and adopt and implement the financial sector strategy (International Monetary Fund, 2018_[42]). Although some measures led to enhanced transparency in revenue management, overall, the programme drew criticism for failing to promote systemic change and enable real accountability, with government resistance to reform and the lack of sustained IMF support cited as constraints. An assessment by the Bank Information Center and Global Witness (Bank Information Center and Global Witness, 2008_[35]) identified the lack of incentives and support for IMF staff implementation of programmes as a debilitating factor.

The IMF experience in Congo underscored that to achieve long-term improvement and systemic change in revenue management, both governments and the IMF needed to engage differently. For governments, the key issues revolve around ownership, political interests, and incentives to ensure that reforms are endorsed and moved forward. For the IMF, they revolve around recognition of the need for a new model of engagement and reform of its working methods and approach to governance and anti-corruption as prerequisites for progress in this field.

In 2010, Congo met the requirements for completion point and debt relief under the Heavily Indebted Poor Countries (HIPC) Initiative of 2006, leading to a different dynamic in its engagement with the IMF. There were no IMF lending initiatives over 2010-19 owing to HIPC relief measures, important loans having been granted by external private actors, and because higher oil prices in the first half of the decade increased the country's revenue. In short, the IMF maintained its surveillance activities. It published regular annual reports in the framework of its Article IV consultations, but did not engage in country programmes, signalling, a more limited degree of engagement and support to the country.

Overall, IMF engagement with the Congo government has been influenced by economic terms and prospects (the same is true of Angola – see below). That is, when poor economic conditions and prospects of IMF support prevail, governments are incentivised to negotiate and agree IMF reform, but once economic conditions improve, beneficiary countries — in this instance, Congo — become less reliant on external help, and national authorities tend to progressively retreat from and abandon reform processes, undermining progress on integrity and accountability issues on the medium to long run. It is difficult to assess the role played by the legal action carried out in France against Congolese authorities on the dynamics of IMF engagement in the country, Research underpinning this paper does not point to strong links between the two and there is scope to consider how these two distinct efforts could have been better connected.

A stepped-up focus on anti-corruption and fiscal transparency after 2018

In 2014, oil prices started to decline and by 2018, Congo's economic situation had worsened dramatically.¹⁸ In this context, IMF programme-supported activities resumed in Congo in 2019 with the negotiation and agreement of a new programme and debt relief supported by the Extended Credit Facility (ECF). The ECF-supported programme, primarily aimed at restoring macroeconomic stability in the country, laid the groundwork for more inclusive growth and targeted governance improvements as a means to enhance efficiency and transparency in the management of public resources, particularly in the oil sector and with a specific focus on addressing the issue of external debt (International Monetary Fund, 2019^[43]).

In terms of performance, Congo implemented all structural benchmarks that are pivotal for improving governance and transparency, albeit with some delay. Three of the five ECF-related quantitative performance criteria for June 2019 were met. To address shortcomings, the authorities took steps in early 2020 to reschedule or repay most external arrears; and committed to developing a debt management strategy to prevent any recurrence and meeting all structural benchmarks by 2021 (International Monetary Fund, 2021^[44]).

As the IMF stepped up its focus on anti-corruption and fiscal transparency with the adoption of the new 2019 ECF programme, it is worth underscoring the links between the content of surveillance activities and the existence and effectiveness of the Fund's support programmes. In the 2019 and 2021 Congo Article IV reports many mentions of the terms corruption and fiscal transparency can be found— corruption is referred to 23 and 31 times in 2019 and 2021 reports, respectively — compared to no or very few (two or three) mentions between 2003 and 2019. Further, these references more frankly and directly address the corruption issues at stake, linking them to operational remedial actions explicitly attached to IMF support. However, Article IV reports make scant use of the term fiscal transparency, which is used for the first time in the 2014 Congo Article IV report with reference to ongoing measures to strengthen fiscal transparency and again in the 2015 Congo report. Despite the push to address fiscal transparency in recent years through, for instance, the 2014 FTC revision, the 2018 Fiscal Transparency Handbook and the 2019 publication of its Pillar IV, it is striking to note that recent Congo Article IV reports mention neither “fiscal transparency” nor the FTC. The 2019 update to the FTC speaks to the importance of transparency in debt and asset management, in oil resource management, public finance management and the transparency of beneficial ownership information. More explicitly anchoring this work in IMF's fiscal transparency tools might drive a stronger focus on these issues and better link IMF surveillance work with FTC-related guidance.

Transparent management of oil revenues: The Fund's engagement in Angola

Despite substantial economic and political recovery efforts after the end of the war in 2002, Angola faces tremendous development challenges. The country is the second-largest oil producer in Africa, with the oil sector accounting for about 64% of tax revenues, one-third of GDP and over 95% of exports (International Monetary Fund, 2018^[45]). Yet living conditions and human development indicators are poor, and its poverty index was 40.6% (World Bank, 2020^[46]). Among the challenges Angola faces are weak governance and institutional capacity, poor public management systems, and increased volatility in public spending.

IMF engagement in Angola can be characterised as a strained relationship overall, like that of the IMF in Congo and many commodity-rich countries in sub-Saharan Africa. Since the mid-1990s, the IMF engagement with the Angolan government has been marked by periods of adverse economic conditions in which the government has appeared to negotiate reform programmes with the Fund, followed by periods of improved economic conditions that, conversely, have led to abandonment of the reforms on behalf of the Angolan authorities.

A strained relationship: from limited progress to reform abandonment

Increased transparency has been a critical condition for IMF co-operation and engagement in Angola over the years. Notable progress was recorded in 2000 when the government, in the context of an SMP, agreed to an Oil Diagnostic, i.e., a review of how much oil revenue was deposited in the National Bank of Angola. To put this into context, there had been widespread international and domestic concern, starting in the late 1990s, over the destination and use of Angolan public funds, which are derived mainly from oil revenues. Although Angolan law (Decree 30/95 of 1995) stipulates that oil revenue is to be deposited in the National Bank of Angola (BNA) (Banco Nacional de Angola), funds appeared to have been illegally deposited with the state-owned company Sonangol and the presidency (Human Rights Watch, 2004^[47]). It also appeared that such funds had been used, in part, to secretly finance arms, as well as to mortgage future oil revenues against immediate oil-backed loans to the government. These activities prompted allegations of corruption and led the IMF and the World Bank to promote an oil diagnostic as a starting point for greater transparency. The agreed Oil Diagnostic, part of a larger economic reform programme, is a study to determine how much oil revenue is deposited in the BNA.

The related economic programme (the SMP) did not last long, however. It collapsed in October 2001 after the government failed to implement promised reforms despite having received repeated extensions. Some of the reforms on which Angola defaulted are strongly related to fiscal integrity and transparency, including those related to the identification, elimination and/or inclusion in the treasury account of all extra-budgetary expenditures; strengthening the Angolan treasury's control over fiscal operations and foreign debt transactions; the conduct of financial audits of 2,000 accounts of the central bank; publication of data on oil and other government expenditures and revenues; and the hiring of an independent international company to audit Sonangol.

The Oil Diagnostic continued, but relations with the IMF grew extremely tense as the Angola government consistently refused or was unable to provide the IMF with basic information on oil-backed loans, unexplained expenses, and oil bonus payments. In 2002, the IMF acknowledged that the Angolan economy had worsened despite a gross increase in oil and diamond-related income over the previous three years and pinned these concerns to a lack of transparency and poor management of government revenues. The Oil Diagnostic further revealed that Sonangol did not follow the 1995 Decree 30/95 requirement for all oil revenue to be deposited in the central bank and had passed over USD 2 billion through other accounts. Also revealed was the lack of meaningful procedures for the government to verify payments by companies, including Sonangol; unreliable records (based on paper transactions as opposed to actual transfers); and the government's failure to provide sufficient information to allow the international audit firm KPMG to reconcile hundreds of millions of U.S. dollars in discrepancies. The government's failure

to publicise related reports and information makes it even more difficult for the public to exercise oversight over the government's use of public funds.

Despite these limitations, the Oil Diagnostic, as the first intentional scrutiny of Angola's oil revenues, was a positive step promoting accountability, transparency, and governance in Angola. It helped expose the poor accounting practices in the government's management of the country's oil and, in that way, served as a reminder and call to donors, international stakeholders and oil companies operating in Angola to actively assume their respective roles — including, in the case of the oil companies, complying with transparency principles and disclosing any signature bonus payments to the government at the time that these are paid (Human Rights Watch, 2004^[47]). However, the status quo very much remained in place during the following years. IMF engagement also was reduced due to the lack of political incentives for the Angolan authorities to move the transparency agenda forward; insufficient steps taken by other actors; and significant oil-related resources, etc. It was not until 2009 and the global economic crisis that the IMF actively reengaged with Angola.

Economic crisis and reengagement

The economic crisis increased the severity of adverse shocks for Angola, leading to an overvalued exchange rate and expansionary fiscal and monetary policies. By 2009, official reserves had fallen by one-third due to the plunge in oil revenues, rapid decline in investor confidence and the heavy intervention by the BNA to sustain a tightly managed exchange rate (International Monetary Fund, 2009^[48]). To mitigate a situation that would have dire economic and social consequences, the IMF agreed to a 27-month stand-by arrangement (SBA) with the Angolan authorities, called the First Fund Programme, introduced in 2009. The IMF issued a loan facility of approximately USD 1.4 billion to help Angola cope with the crisis and fiscal impacts of low oil prices. The programme featured three main pillars:

1. a fiscal effort in the 2010 budget to provide adequate resources for social spending and public infrastructure projects. The IMF also set out transparency conditions requiring the Angolan government to publish quarterly budget execution reports and ensure oversight of the leading state-owned enterprises, especially Sonangol. The government was also required to provide full audits of Sonangol's accounts by independent international auditors and publish the audited financial statements
2. an orderly exchange rate adjustment supported by a constricted monetary policy to normalise the conditions in the foreign exchange market
3. measures to safeguard the financial sector, including bolstering the BNA's supervisory and regulatory framework to reduce the risks from the economic slowdown and foreign currency lending to unhedged borrowers

In its Fifth Review in November 2011, the IMF commended the Angolan authorities for strong performance under the SBA and for their efforts to improve fiscal transparency and accountability in key public enterprises — a contrast to IMF reviews of its 2005 and 2008 programmes in Congo (International Monetary Fund, 2011^[49]). The IMF noted that the Angolan authorities increased their monitoring of oil revenue transfers to the budget and completed the settlement of the 2008-09 stock of payment arrears, which was a major objective of the programme. Government efforts to address the unexplained residual in the fiscal accounts and reduce quasi-fiscal operations by Sonangol were also highlighted.

It is interesting to note that in the years preceding the adoption of the 2009 SBA, the IMF mentioned fiscal transparency concerns numerous times in its Angola Article IV consultations. In the 2004 and 2007 Angola Article IV reports, fiscal transparency is referenced five and nine times, respectively, in association with the tracking of progress made. This contrasts sharply with Article IV reports for Congo, which over the same 2003-08 period did not refer to fiscal transparency by name, and with the absence of IMF lending

programmes in Congo on the promotion of fiscal transparency and governance (implementation or negotiation) over that same period.

In Angola, therefore, the inclusion of issues related to fiscal transparency in Article IV reports in 2004 and 2007 seems to have translated into enhanced attention and improvements to fiscal transparency and integrity in subsequent years. Moreover, while Article IV reports for Angola between 2012 and 2016 included no or very limited reference to corruption and fiscal transparency, that period was characterised by significantly limited IMF engagement in the country and little to no significant improvement by national authorities on these issues.

Public debt started rising in Angola in 2012 and had soared to 87% of GDP by 2018 (US Department of the Treasury, 2021^[50]). To help the country lay a firm foundation for long-term and deeper structural reforms to boost competitiveness and non-oil sector growth, the IMF agreed in December 2018 to support Angola through a three-year Extended Fund Facility (EFF) in the amount of approximately USD 3.7 billion.

Towards stronger country performance

The objective of the IMF-supported EFF programme is to restore external and fiscal sustainability and set the grounds for sustainable, private sector-led economic growth and diversification, with an emphasis on bolstering accountability and transparency of state-owned enterprises (International Monetary Fund, 2019^[51]). Through the programme, the IMF also aims to support Angola in updating its anti-money laundering and countering the financing of terrorism (AML/CFT legal framework and improve governance (International Monetary Fund, 2018^[42]).

Two noteworthy factors have contributed to facilitating and reinforcing IMF engagement in Angola on the fiscal transparency and anti-corruption agendas. First, João Lourenço was elected in 2017 as president, with an explicit drive to improve transparency and accountability, and ensure that past governments and elites suspected of corrupt behaviour are duly prosecuted. Second, reporting in 2020 by the ICIJ, based on the Luanda Leaks documents, led to demands for greater accountability. The revelations focused on the fortune amassed by Isabel dos Santos, daughter of a former Angolan president, highlighting conflicts of interest and the creation of a network of offshore and shell companies to park or hide assets (Shaxson, 2020^[52]).

Final negotiations and implementation of the most recent IMF programme in Angola took place in the context of these events, suggesting that a combination of forces — investigative journalism, IMF activities and government incentives to enhance integrity mechanisms — may succeed best in triggering change and progress. In May 2021, the Fifth Review of the EFF indicated that Angola had been meeting indicative targets with only marginal defaults and had met all but one performance criteria by the end of December 2020. The review also concluded the country was on track with the implementation of seven out of nine structural benchmarks, albeit with some slight delay, and was planning several measures to address implementation of the remaining two, which relate to public procurement and modifications to the BNA law (International Monetary Fund, 2021^[53]). Overall, Angolan authorities have shown a commitment to maintaining fiscal and monetary discipline despite operating in a challenging external economic environment and have taken steps to liberalise their currency regime. They have also committed to addressing external debt issues.

Here, too, the links between references to corruption vulnerabilities, country commitments and actions, and the content and focus of IMF engagement are worth noting. In contrast to Article IV reports during 2011-16, the Angola 2018 Article IV report mentions corruption 19 times, putting the issue at the centre of the policy dialogue between the IMF and national authorities and at the heart of the actions to be carried out in the country. Further references and related actions to the FTC and its Pillar IV component, which were not contained in the Angola 2018 Article IV report, might contribute to enhancing the relevance and

focus of IMF engagement on transparency and accountability in oil-rich developing countries such as Angola.

Insights from the Fund's anti-corruption work in Congo and Angola

This section analyses how the IMF's approach to addressing issues of corruption and fiscal transparency in the two case study countries has evolved. It looks at factors that have influenced IMF work on these issues in Congo and Angola, that explain the ups and downs of its engagement, and that led to specific outcomes, affecting not only the two countries but IMF anti-corruption efforts more broadly. Some of these factors relate to the IMF's own dynamics and considerations, while others relate to external events and partner country contexts.

As discussed in Chapter 3, the IMF's approach to governance and corruption issues has evolved significantly in recent years. Having once made few or no references to these issues, the Fund gradually moved to address governance, anti-corruption and oil sector-specific challenges substantially, directly and proactively. As seen in the case study countries, the overall trend has been towards an enhanced IMF focus on implementation of anti-corruption and transparency efforts. Though IMF fiscal transparency and anti-corruption engagement is the result of a series of factors and has by no means been linear or straightforward, its evolution reflects the spirit and ambition of the 2014 revisions to the FTC and the 2018 governance policy.

Fund-centred dynamics

Different and often simultaneous processes have shaped the Fund's fiscal transparency tools and governance policy.

- **The IMF's tools and their revisions have affected the tone and content of its engagement with member countries, and particularly with fragile resource-rich contexts**

Within the IMF, internal reviews and the development of new tools have fostered learning and helped identify gaps in and limits to its work. These, in turn, have translated into internal strategies to address corruption vulnerabilities more firmly by explicitly putting corruption issues on the agenda of country engagements. This can include adding preconditions or target objectives for lending programmes, such as the creation of anti-corruption observatories or other oversight bodies and the allocation of resources (both human and financial) for these bodies to operate properly.

External reviews and pressure exerted by organisations such as Global Witness and the Bank Information Center have also influenced the IMF's governance and fiscal transparency strategy. Member countries have openly criticised the Fund's performance on issues of governance, anti-corruption, transparency, and accountability — including the lack of staff incentives to incorporate transparency measures in programmes and the need for enhanced guidance to do so — as well as some features of the IMF's engagement with member countries. This input has informed IMF review of related policies and actions, producing slow yet incremental change, and illustrating the institution's ability to adapt its approach and improve ways of working as needed.

- **When the Fund explicitly raises corruption vulnerabilities and transparency issues, country policies are more likely to address these**

As illustrated by the Article IV reports in both Congo and Angola over 2003-21, formal references to fiscal transparency, both in the IMF's surveillance activities and in its support programmes, appear to have contributed to more firmly anchoring the fight against corruption, greater fiscal transparency and sustainability issues both in the dialogue between the IMF and member countries and in countries' priority actions. Experience and insights emerging from the two country case studies indicate that explicit

reference to corruption vulnerabilities and fiscal transparency norms and standards in Article IV consultations make their uptake more likely.

- **Conditioning IMF programme-related disbursements more closely on achieving specific targets seems to have strengthened the impact IMF engagement**

It appears that more recent IMF engagement on governance and fiscal transparency in the two case study countries conditions disbursements on attainment of certain objectives more strongly than was the case in previous arrangements. One example is the ECF programme in Congo: At the end of 2019, the IMF made its next disbursement conditional on implementation of several pending measures, among them the strategy to clear domestic arrears with the private sector and the restructuring of the external debt to commercial creditors¹⁹ (Payne, Zhdannikov and Bavier, 2020^[54]). The Fund also requested Congolese authorities to do more to improve governance, transparency and anti-corruption efforts — that is, adopt implementation decrees to operationalise the new Anti-Corruption Authority and the Commission on Transparency — and to publish the three reports submitted to parliament on the use of oil revenues.

Factors linked to the economic situation, and thereby needs, of countries of operation

- **Weakening fiscal position and overall poor economic situation**

It is often the case that the weakening economic and fiscal positions of developing country governing bodies trigger requests for support and IMF engagement. The content and orientations of IMF-supported programme engagement in member countries depend on the needs expressed by country governments and, to a large extent, their fiscal position and economic situation. Such requests, in turn, offer the IMF an opportunity to engage the partner government on issues of fiscal transparency and anti-corruption. For example, a weakening economic situation prompted the Fund's 2018-19 engagement in Angola. Through its engagement, the IMF was able — once again, but more strongly — to put the issues of fiscal transparency and debt management and sustainability on the agenda. The same dynamics apply for the Fund's engagement in Congo over the period 2018-19. As these country case studies illustrate, the nature and degree of IMF engagement is influenced by the price of commodities and the levels and sustainability of an oil-dependent developing country's debt.

- **The prospect, negotiation, or implementation of lending programmes**

The two case studies show that IMF involvement on corruption, governance and fiscal transparency issues varies according to whether programmes, and particularly lending programmes, are under negotiation or implementation or whether IMF engagement is limited to surveillance activities — typically through Article IV consultations and reports.

Commitments made by Congo to adopt the 2019 ECF programme are a good illustration. In negotiating the programme, the country took steps to (i) implement an ambitious programme of fiscal consolidation and structural reforms, with domestic revenue mobilisation as a key objective; (ii) increase the transparency of public finances; (iii) improve public investment efficiency; (iv) eliminate off-budget spending; and (v) strengthen the rule of law and AML/CFT framework (International Monetary Fund, 2019^[43]). There had been little prior progress in prior in these areas – and no related IMF-supported programme.

The power of lending programmes in driving and sustaining transparency and accountability efforts, was evident. When government authorities perceive that lending programmes will not be feasible or granted, they have tended to abandon or show limited commitment to transparent practices and behaviours. Individual decisions often stem from more complex processes and of a combination of factors. But both country studies found that integrity and anti-corruption efforts lost steam as IMF engagement moved away from lending programmes and towards more limited surveillance activities.

Another illustration is Angola's 2003 commitment to finally publish the inception and final reports from the Oil Diagnostic study, as recommended (International Monetary Fund, 2003^[55]). It is likely that Angola's announcement, however, was related to the prospective negotiation of an SMP that was to be followed by a PRGF arrangement. Until then, Congo had resisted and/or obfuscated when urged to disclose country's crude oil sales and had failed to follow through with an audit and other actions.

- **National dynamics and local features may make fiscal transparency more necessary or facilitate its inclusion in discussions between the Fund and partner countries**

Context-specific factors in both case study countries shaped the IMF's fiscal transparency and anti-corruption engagement as well as its results and outcomes. For example, the change of government in Angola in 2017 opened the way for renewed action to address transparency and accountability. Just as vested interests can maintain the status quo and sap the political will to tackle ongoing challenges, changes in political leadership can create opportunities for reviving governance agendas – although these should be managed carefully to ensure the objective is enhanced transparency and accountability, rather than actions driven by revenge and rivalry. As noted, this was true in Angola, where President Lourenço has embarked on an anti-corruption drive:

- Starting in 2018, the new Angolan authorities demonstrated a high level of commitment to strengthening fiscal sustainability.
- The government enacted the 2018 Law on the Repatriation of Financial Resources (Law No. 9/18) to facilitate the repatriation of funds illegally held outside the country by Angolan individuals and corporations (PwC, 2018^[56]).
- Several senior members of the former regime have been convicted of corruption in recent years. This is a consequence of a change in the governing elites and of the revelations reported by the ICIJ based on the Luanda Leaks documents. Among those prosecuted by Angolan authorities was the son of Angola's former president, who was sentenced to five years in prison for corruption (Reuters, 2020^[57]).

In the case of Congo, and looking at its fiscal expenditure in 2017, the IMF uncovered extensive debts and domestic arrears that the government had with regard to China and private partners (commodity traders). This discovery highlighted the shortcomings of former fiscal transparency efforts and contributed to a renewed IMF dialogue with the authorities on ways to correct and strengthen their fiscal statements and reporting. The IMF has made it a priority and requirement of its engagement in Congo that these issues be addressed.

Other driving forces and external dynamics

- **Civil society has influenced the Fund's engagement by criticising its lending programmes in contexts where governments repeatedly break their promises**

CSOs have repeatedly criticised the IMF and the broader international community for not calling out governments' poor records of adhering to their commitments and requirements on fiscal transparency. In 2019, for instance, CSOs were highly critical of the Congolese authorities' record on human rights, governance and anti-corruption and pressed the IMF to ensure that the government kept its new promises to enhance transparency and accountability.²⁰ This pressure and broader scrutiny contributed to ensuring that the IMF and Congolese authorities focused more forcefully on transparency in the oil sector in their discussions than in the past and that it be translated as prior actions and benchmarks in Fund programmes.

Similarly, in Angola in 2009, several CSOs condemned the government's lack of transparency about the oil industry and revenues and criticised the IMF for negotiating a prospective loan facility with Angola with few stringent transparency and anti-corruption requirements and conditions. The CSOs noted the Finance Ministry's inability to publish coherent, consistent and audited oil revenue data as well as Sonangol's

opacity. Global Witness (2009^[58]) urged the IMF to require, as a condition of any new loan, that the authorities publish Sonangol's accounts and as fully audited and credible oil revenue data and suspend the allocation of oil rights to private companies of questionable ownership (Global Witness, 2009^[58]). CSOs voiced similar criticisms in the context of the 2019 EFF programme.

- **Corruption revelations exposed by transnational investigations can push the anti-corruption agenda forward**

Investigations into corruption by journalists and civil society organisations have provided impetus for IMF fiscal transparency efforts. International coverage of many such investigations, indictments of high-level officials, and the involvement of high-profile corporate entities has exerted pressure on the IMF, albeit indirectly, to engage in governance and corruption issues more forcefully.

The repercussions of the *Biens Mal Acquis* affair for Congo and the Luanda Leaks cases for Angola — direct or indirect — demonstrate how revelations of grand corruption and illicit wealth can have far-reaching impacts. The revelations stemming from these investigations have undoubtedly informed the IMF's rationale in these two countries and focus on promoting enhanced fiscal transparency and anti-corruption measures.

- **Pressure from parallel transparency initiatives can reinforce and interlink with IMF engagement on fiscal transparency and anti-corruption**

Causal relations cannot be established, but key stakeholders have suggested that parallel efforts to increase transparency appear to have contributed to advancing and reinforcing the IMF's governance and fiscal transparency agenda in particular countries. In Congo, for example, the country's Extractive Industries Transparency Initiative (EITI) candidate status, obtained in 2007, and subsequent reports can be seen to have fed into and leveraged IMF efforts to push the transparency and fiscal transparency agenda forward. The adoption of a new transparency code in March 2016, which translates EITI requirements into domestic legislation, can also be seen as a positive advancement for all transparency efforts in the country Congo.²¹

Likewise, Angola announced its intention to join the EITI in 2020 (Extractive Industries Transparency Initiative, 2020^[59]), and it can be anticipated that related steps will reinforce IMF's engagement on fiscal transparency in the country and thus reinforce the work and objectives of both the IMF and the EITI around oil sector governance and accountability.

- **The combined influence of different factors has strengthened more recent IMF engagement**

The combination of different factors has strengthened the more recent engagement of the Fund with the Congo and Angola on fiscal transparency and anti-corruption and made it more proactive than previously.

Regarding Congo, the most recent ECF programme and the 2019 and 2021 Article IV reports raise explicit concerns on corruption and the management of oil resources, and these are referenced in pending actions and prerequisites for future disbursements in ways not seen previously:

- Restoring fiscal sustainability and improving governance are at the core of the programme's objectives, and three prior actions for the programme (discussed in 2017-18) involve reporting to the Congolese parliament on areas where previous governance failures had been observed. These include the management of oil revenues, infrastructure spending and extra-budgetary contracting of debt.
- Similarly, a 2019 pre-ECF programme report explicitly identified three main sources of corruption risks in oil revenue management that are to be squarely addressed in the new IMF lending programme: production sharing agreements (ii) inadequate budget reporting and misallocation of oil funds and (iii) the National Oil Company (SNPC).²²

- The programme further builds on a 2018 IMF-supported report that identified governance and corruption vulnerabilities and suggests concrete actions as a way forward, including time-bound reform measures.

Likewise, while the improvement of oil revenue management integrity has consistently been at the core of IMF engagement in Angola, the Fund's emphasis on fiscal transparency and discipline has increased and sharpened over time.

- The IMF's ongoing Extended Fund Facility-supported programme, in which fiscal consolidation remains a core element, emphasises the importance of strengthening public financial management to improve the allocation of scarce public resources as well as fiscal policy formulation and implementation.
- Transparency is also a prominent feature of the IMF's conditions, which rely, for example, on the publication of quarterly fiscal reports and more openness in public procurement processes. Improving governance, strengthening anti-corruption units and courts as well as the AML/CFT framework, and reducing the risks associated with state-owned companies (including Sonangol) have been IMF core tenets in recent years.

Though it is difficult to assess the full impact of this relatively new IMF approach to governance, fiscal transparency, and corruption, both country case studies suggest that the IMF is adopting a more robust and proactive approach in partner countries where corruption vulnerabilities are macro-critical. This is in line with the aspirations of the renewed IMF approach (International Monetary Fund, 2018_[60]).

5 A cohesive approach to fighting corruption: Findings and insights

Improvements in transparency and accountability and the fight against corruption can largely be seen as the result of a conjuncture of forces and events — what this paper calls conditions of possibility. External and internal issues, domestic and international elements, scandals and cases of corruption, promotion of international norms and standards, oversight and monitoring activities, and the involvement of civil society have all contributed to raising awareness and triggering actions towards enhanced integrity. This chapter presents findings that emerge from the analysis of the impact of the *Biens Mal Acquis* (BMA) affair and from the review of International Monetary Fund (IMF) engagement on fiscal transparency in Angola and Congo.

Key findings and recommendations

- **Transnational investigative journalism and activism play a central role in fighting grand corruption and have contributed to shedding light on a myriad of enablers**

Beyond their specific contributions to the series of BMA cases, transnational investigative journalism has helped track proceeds of corruption, unpack the modus operandi of collusion and corruption, and raise awareness on both. As noted, the BMA affair led to the conviction and sentencing in France of an incumbent senior foreign executive — a first. Equatorial Guinea Vice-President Teodorin Obiang was convicted in 2017 of embezzling and laundering public funds, and France's highest court upheld the verdicts in July 2021. Additional, new complaints have been filed and cases opened since the three cases stemming from the BMA affair were initiated. Transnational investigations by news organisations and journalists have contributed to shedding light on the workings of corruption and illicit wealth, including reporting by the ICIJ since 2015 based on several document leaks, with the most recent investigation and revelations drawn from the so-called Pandora Papers (ICIJ, 2021^[3]).

The work by investigative journalists and civil society organisations (CSOs) to track and expose illicit wealth and proceeds of corruption has helped shed light on the myriad of actors that facilitate corruption and illicit financial flows (IFFs), among them direct enablers such as legal, accounting, audit and management service professionals and indirect enablers such as banks, traders, real estate brokers, etc. Without this army of enablers, high-ranking officials and politicians involved in corruption would not be able to operate or to hide or use the proceeds of corruption. Enablers should therefore be seen as an integral part of a larger, more complex accountability system, and tackled accordingly.

Investigative journalism also has highlighted the extent to which OECD countries and other countries of the global North have been destination countries and provided a safe haven for illicit wealth and its owners. Investigative journalism continues to underscore the importance of identifying, freezing and returning stolen assets.

- **The International Monetary Fund's governance and fiscal transparency efforts are making some progress in fighting corruption in oil-rich developing countries**

The IMF has been engaged for decades in efforts to promote and enhance fiscal transparency, identify and expose areas of risk, and advance global norms and practices to fight corruption. Progress has been uneven and not always entirely satisfactory since greater transparency has not always enhanced accountability. Reforms have fallen short in terms of limited disclosure of fiscal risks, revenue leakages due to opaque quasi-fiscal activities, fuel subsidies and extra-budgetary spending, among others. In some cases, anti-corruption laws and regulations have been adopted, but without also addressing systemic weaknesses that allow structural corrupt practices to persist. What progress has been achieved is not always sustained over time.

The Angola and Congo case studies demonstrate that formally and more systematically linking Article IV consultations and activities related to the Fiscal Transparency Code (FTC) would enhance IMF efforts in this field. This has not always been done, for example, the 2019 and 2021 Article IV reports for Congo (published in January 2020 and October 2021, respectively make no reference to the FTC or its resource revenue management Pillar IV). Yet several priorities related to current IMF engagement in Congo fall squarely within the scope of the FTC. Explicit linkages between IMF surveillance and programmatic efforts could increase the impact of IMF work. IMF would further gain from referring more regularly to fiscal transparency evaluations and inviting member countries to request these voluntarily.

- **An approach that systematically combines complementary actions to fight corruption is proven to create conditions of possibility for sustainable, long-term change**

Exposés by investigative journalists and fiscal transparency efforts are both useful in fighting corruption. But neither of these, on their own, will, bring source, transit and destination countries together to address corruption risks and vulnerabilities sustainably and systematically. Instead, combining forces and different anti-corruption efforts builds, can trigger change and progress. The recent Angola-related revelations are another case in point; on the one hand, the Luanda Leaks have contributed to the opening of further investigations into dos Santos (e.g. an investigation and corruption charges by a Netherlands tribunal) and to renewed calls for Angola to join the EITI and implement its standard (Extractive Industries Transparency Initiative, 2020^[61]). On the other, they have contributed to inform the recent political dialogue and programme support between the Angolan authorities and the IMF. It is the coming together of different anti-corruption efforts and approaches that, through a combination of forces and the building of a momentum, can prove most successful in triggering change and progress.

For instance, progress now seen in Congo appears to be the result of these in combination: first, investigative journalism and the BMA affair highlighted the role of oil-trading actors and other enablers in the accountability circle and second, fiscal transparency and debt sustainability were recognised as relevant and treated as complementary concerns and activities.

Main emerging insights for donors and the international community at large

Several insights of use to donors and the international community at large emerge from the key findings of this paper and from the enabling factors it identifies throughout. These can inform the range and type of tools and approaches that these stakeholders might support to tackle corruption vulnerabilities and foster fiscal transparency at home and in partner countries. The insights are presented here in the form of action points.

- **Adopt a systems approach to corruption and illicit financial flows to address their multifaceted and transnational dimensions and ensure policy coherence**

To effectively address corruption and IFFs, countries need to address their how they are linked. Dealing with the push and pull factors is important for the coherence and efficacy of anti-corruption measures. The

policy coherence of a country's approach to tackling corrupt practices and illicit flows and how it responds to these — as source, transit and/or destination country — is key to achieving long-term improvements in this space. It is important to ensure that illicit flows are dealt with at their core and that corrective measures do not simply shift such flows to other or new destinations as an unintended consequence. Donors need to ensure that their countries, as destinations of IFFs, prevent illicit wealth from being deposited within their jurisdictions and ensure that corrupt individuals are prosecuted, and stolen assets frozen and restored to victim populations.

- **Support investigative journalism to fight corruption**

Donor support to investigative journalism and related efforts at both national and international level, can help fund and publish investigative reporting that uncovers incidents of corruption, thereby contributing to enhanced governance, fiscal transparency and accountability in partner countries and in donors' home jurisdictions. Investigative journalism has been instrumental in holding individuals, governments and corporations to account, revealing the complex networks of enabling forces that may fuel transnational corruption and inviting corrective actions. For instance, such reporting has led to criminal investigations, legislative reforms targeting enablers of corruption, and the recovery of billions of dollars in taxes and penalties (ICIJ, 2021^[3]).

Support to investigative journalists is therefore crucial. The nature of their work often places journalists in dangerous conditions and exposes them to direct threats to their lives in many countries and from autocratic regimes. Among many examples, the 2021 Nobel Peace Prize laureates, journalists Maria Ressa and Dmitry Muratov, were recognised “for their ‘courageous fight for freedom of expression’ in the face of authoritarian governments” (Berry, 2021^[62]). Both journalists have faced severe threats in their home countries due to their reporting on human rights abuses and corruption.

- **Consider complementing and better connecting existing integrity tools and initiatives to enhance progress in anti-corruption and fiscal transparency**

Independent investigative journalism plays an important role by bringing alleged corruption to light, but they are starting points. To generate more systemic change requires additional measures that can target individuals, institutions or national frameworks (legal, regulatory, etc.). Likewise, IMF anti-corruption and fiscal transparency efforts could benefit from having IMF surveillance work relate more closely with its FTC and specifically with Pillar IV. Building in additional measures and/or activities, such as investigative journalism, would also contribute to informing IMF activities.

While surveillance activities are important — and IMF Article IV consultations are key to putting crucial issues on the agenda and revealing macro-critical weaknesses — their long-term success relies on implementation of programmes wherein governance, anti-corruption and fiscal transparency concerns are translated into target objectives or benchmarks. Surveillance work consists essentially of periodic visits to IMF member countries. These enable macroeconomic perspectives and understandings of the situation but do not allow for a grasp of sensitive issues in detail. Such a granular understanding is made possible in the context of field presence and more regular, in-depth and sustained dialogue with the authorities, such as through lending programmes and related technical assistance. Better connecting surveillance, fiscal transparency tools and integrity activities and creating the links between them would increase their impact. For example, more formal references to fiscal transparency norms and a more formal application of the FTC and of its Pillar IV by the IMF in its surveillance activities and support programmes would likely leverage and foster enhanced focus and attention to these issues.

The same holds true for leveraging investigative journalism findings, for example. There is potential for IMF efforts to benefit from multidisciplinary advice and support to enhancing their impact. The Congo study and the BMA affair along with Angola and the more recent Luanda Leaks revelations illustrate how transnational investigative journalism can enhance integrity in oil and gas trading activities. Research and reporting activities could provide real-time granularity to the information available for IMF consultations with country authorities, far exceeding the detail that is normally available (Porter D. and Anderson C., 2021^[63]).

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Notes

¹ Some national, regional and international civil society organisations (CSOs) carry out advocacy but also research and investigative work. The example studied in this paper, the *Biens Mal Acquis* affair is an illustration of how several CSOs – e.g. CCFD-Terre solidaire, Transparency International, etc. - used their investigative function to advance the identification and reporting on these cases.

² Article IV consultations are a key vehicle through which the IMF exercises economic surveillance. They involve discussions between Fund staff and a country’s authorities on the economic situation, outlook, and risks; as well as on current and planned policies, and how these affect the domestic and balance of payments stability, as well as global stability through spill overs where relevant, and recommended policy adjustments. Article IV consultations aim to promote the stability of individual members’ economies as well as global economic and financial stability (IMF, 2022).

³ There is no universally agreed definition of grand corruption, but consensus on the fact that it relates to misuse or abuse of high-level power, large-scale or large sums of money, and harmful consequences. [Transparency International](#) defines it as “the abuse of high-level power that benefits the few at the expense of the many and causes serious and widespread harm to individuals and society. It often goes unpunished”.

⁴ As defined in Article 52 para. 2(b) of the United Nations Convention on Anti-Corruption (UNCAC), which provides for enhanced legal scrutiny for politically exposed persons (PEPs), PEPs are defined as individuals entrusted with prominent public functions together with their family members and close associates. See United Nations Convention Against Corruption (UNODC, 2004^[66]) and FATF Guidance (FATF, n.d.^[67]),

⁵ Beyond initially filing the criminal complaint, the civil parties in the BMA affair supported the judicial investigation by providing complementary legal research work and collecting information. They also publicised the BMA cases through a media campaign that informed the public not only of its origins but also the difficulties of opening the process, which served to put pressure on relevant authorities.

⁶ See *Loi n° 2013-1117*, the 6 December 2013 law to combat tax fraud and serious economic and financial crime (*loi de lutte contre la fraude fiscale et la grande délinquance économique et financière*), http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=14AF05711C3360B51B38245768816F9C.tpdjo11v_3?cidTexte=JORFTEXT000028278976&dateTexte=20140309

⁷ See *Loi n° 2013-669*, the 25 July 2013 law on the powers of the Minister of Justice and magistrates of the Public Prosecutor's Office with regard to criminal policy and the implementation of public action (*loi relative aux attributions du garde des sceaux et des magistrats du ministère public en matière de politique pénale et de mise en oeuvre de l'action publique*), <https://www.legifrance.gouv.fr/eli/loi/2013/7/25/JUSX1302549L/jo/texte>.

⁸ Transparency International France has advocated an “illicit wealth restitution mechanism” based on the principles of transparency, solidarity, efficiency, integrity, and accountability, and called on France to adopt concrete measures in line with the 2005 Group of Eight (G8) Principles and Options for Disposition and Transfer of Confiscated Proceeds of Grand Corruption and the Best Practices for the Administration of Seized Assets. The mechanism proposed by TI France rests on three main elements: (i) funds are to be deposited with the Agency for the Management and Recovery of Seized and Confiscated Assets (*Agence de gestion et de recouvrement des avoirs saisis et confisqués*); (ii) allocation of funds is to be decided in consultation with CSOs; and (iii) funds are to be transferred to selected recipient organisations for the implementation of specific projects or programmes.

More information: https://transparency-france.org/wp-content/uploads/2017/10/Rapport_BMA_restitution_avoirs_corruption.pdf.

⁹ The LVP — loi fédérale suisse sur le blocage et la restitution des valeurs patrimoniales d'origine illicite de personnes politiquement exposées à l'étranger — updated the 2011 Lex Duvalier law.

¹⁰ The 2013 FATF Guidance mentions specific requirements for PEPs and includes reference and clarifications to Recommendation 10 on customer due diligence, Recommendation 12 on PEPs, and Recommendation 22 on customer due diligence for designated non-financial business and professions.

¹¹ Namely, the IMF aimed to ensure a more comprehensive approach to governance issues that lie within its mandate and expertise in the context of Article IV consultations and use of IMF resources; to more proactively promote policies and the development of institutions and administrative systems that aim to eliminate the opportunity for rent-seeking, corruption and fraudulent activities; to treat governance issues in all member countries even-handedly; and allow enhanced collaboration with other multilateral institutions.

See <https://www.imf.org/external/pubs/ft/exrp/govern/govern.pdf>.

¹² The first assessment focused on the general implementation of the Note. The second, which formed part of a broader biennial surveillance review, discussed the application of the Note in the context of surveillance. Both reviews concluded that implementation of the policy was broadly. See Annex I in the IMF report on the role of governance issues at <https://www.elibrary.imf.org/view/journals/007/2017/004/article-A002-en.xml>.

¹³ An IMF representative reported that these are the anticipated impacts during the March 2019 plenary meeting in Paris of the OECD DAC Anti-Corruption Task Team.

¹⁴ These were referred to as fiscal transparency modules and were included in Reports on the Observance of Standards and Codes, or fiscal ROSCs, and accompanied by a Manual on Fiscal Transparency.

¹⁵ See <https://www.imf.org/external/np/seminars/eng/2012/kinshasa/index.htm> and <https://www.imf.org/en/News/Articles/2015/09/28/04/53/sopol033012a>.

¹⁶ An SMP refers to a set of economic reforms that governments negotiate with the IMF and agree to implement while the IMF monitors their progress. When successful — that is, when progress is judged to be effective — an SMP can lead to IMF formal lending processes and support programmes.

¹⁷ Pending measures included the audit report on an oil field concession; adoption of a decree declaring that all new oil concession contracts are to be awarded via a competitive and transparent international bidding process; and publication of the oil cost audits for 2004 and 2005.

¹⁸ Following the decline in oil prices in 2014 and due to Congo's heavy reliance on oil, the real growth rate averaged -5.2% between 2015 and 2020. See <https://pubdocs.worldbank.org/en/425451492188155513/mpo-cog.pdf>.

¹⁹ In January 2020, no agreement had yet been reached around a tentative USD 1.7 billion debt restructuring between Congo and energy traders Glencore and Trafigura, jeopardising an IMF bailout for the country. Indeed, the IMF suspended the submission of its 2019 year-end review to allow Congo to conclude a deal with the traders. See <https://www.reuters.com/article/us-congorepublic-oil-traders-debt-idUSKBN1ZN21H>.

²⁰ In 2019, Global Witness urged the IMF not to release funds for new loans before Congo authorities took concrete action on transparency, warning there was a high risk that they would not keep earlier promises and that poor governance and mismanagement would not be sanctioned. According to Global Witness, Congo had not kept long-standing and repeated promises to the IMF to stop contracting oil-backed loans. For details, see <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/imf-congo-transparency-actions-before-bailout/> and <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/rigged-republic-of-congo-oil/>.

²¹ Congo has published its production-sharing agreements since 2012. Its new transparency code, however, includes provisions related to beneficial ownership disclosure; state participation managed by the national oil company; publication of production and export data; reporting on cost-oil, revenues, and expenditure by the national oil company; audit and reconciliation of government revenues; and transparency of resource allocation and quasi-fiscal expenditures. It also mandated project-level reporting and open data.

See https://eiti.org/sites/default/files/attachments/eiti_-_republic_of_the_congo_validation-2.pdf.

²² These sources of corruption risks confirm the three IFF areas of vulnerabilities identified by the ACTT IFF programme of work: selection of traders (on behalf of the SNPC); terms of sale (as concerns production sharing agreements and SNPC); and the way revenues are reverted into government accounts (e.g. budget reporting and allocation of funds).