

Business, Corruption and Human Rights Violations

Submission to the Working Group on the issue of human rights and
transnational corporations and other business enterprises

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Introduction

RAID is a UK based non-governmental organization which exposes corporate wrongdoing, environmental damage and human rights abuses, partnering with those harmed to hold companies to account. Through rigorous investigation, advocacy and the law, RAID seeks to strengthen regulation of business and achieve justice.

RAID welcomes the opportunity to input into the Working Group's consultation on the theme of "connecting the business and human rights and anti-corruption agendas". Inevitably, in RAID's experience, both human rights violations and corruption go hand-in-hand whenever there are exploitative mineral contracts or other illicit business relationships with political elites and state security forces.

This submission is structured according to the guiding questions provided by the Working Group, but restricted to those issues where RAID has sufficient knowledge, based upon in-country research. Hence, not all guiding questions are addressed.

RAID's emphasis on using concrete cases of abuse and exploitation to critique the existing legal and regulatory framework leads to a focus in this submission upon:

- Mining in conflict-affected states, post-conflict states or where governance is weak. Examples are drawn from the Democratic Republic of Congo and Tanzania.
- A concern with social and economic rights, alongside documenting killings and violence against those caught-up or targeted in business-related human rights abuse.
- The nexus between business, corruption and human rights abuse not only as this relates to high-level schemes involving political elites and international companies, but also at the operational level where bribery and abuse are also intertwined.
- Actively pursuing redress for the victims, both through existing judicial and non-judicial mechanisms, and by seeking legal, regulatory and policy reform.

1. Corruption and human rights with a business nexus

Q1. *What are the key areas where corruption causes, contributes or is linked to human rights abuses and negative impacts for right holders? Are there key sectors or key areas where corruption leads to human rights abuses with a business nexus?*

A. High-level corruption and human rights abuse

The extractives sector in conflict-affected states is a key area where corruption is a root cause of human rights abuse.

ii. When mineral wealth becomes a curse: conflict in the Democratic Republic of Congo

The link between corruption, human rights abuse and corporate exploitation is epitomised by the extractive sector in mineral rich countries affected by conflict and instability. The Democratic Republic of Congo provides a stark example of the exploitation and misery that results.

- Congo is the world's top producer of cobalt, accounting for approximately 55 to 60% of global supplies (used in rechargeable batteries) and accounts for 32% of mined tantalum

(used in electronic components). It produces 13% of the world's diamonds and 5% of the world's copper. It is also rich in gold.¹

- Congo is ranked near the bottom of the Corruption Perceptions Index, at position 161 out of 180.³
- In just three years, from 1999 – 2002, an estimated US\$5 billion of assets were transferred from the State mining sector to private companies under the control of an elite political, military and business network with no compensation or benefit for the State treasury.²
- This corrupt transfer excludes the vast amount of mineral wealth flowing out of eastern Congo, at the time under the control of rebel groups backed by neighbouring powers, and brought to global markets by international businesses.
- This exploitation took place during the Second Congolese war, a vicious cycle of conflict in which revenues from natural resources helped to pay for arms. Competition to control natural resources was an important factor contributing to the conflict.³

a) Mechanisms of corruption

Beginning in 2000, a series of United Nations reports raised grave concerns about the link between natural resources exploitation and the conflict in Congo, including how mining assets were allocated to companies and individuals acting as proxies for Congo's allies in exchange for military support.⁴ In 2002, 85 corporations, together with unscrupulous businessmen, were accused by the UN experts of helping to perpetuate conflict for control of Congo's vast natural resources and of profiteering from it.⁵ One of those identified was Israeli businessman Dan Gertler, accused of using his close ties to the then president-in-waiting, Joseph Kabila, to monopolise the trade in conflict diamonds in exchange for money, weapons and military training.⁶ Another businessman of "questionable standing" named by another UN panel was Billy Rautenbach, later described by the US authorities as a crony of then Zimbabwean president, Robert Mugabe.⁷

Further reading: [Unanswered questions: Companies, conflict and the Democratic Republic of Congo](#)

In April 2003, the warring parties finally agreed to share power, while the Congolese people counted the cost of the war. Presidential and legislative elections took place in July 2006, with Joseph Kabila confirmed as DRC's first democratically elected head of state in over 40 years. In the 12 years that followed, Kabila consolidated power and alongside Gertler and other international backers entered

¹ Cobalt Institute, Cobalt Production and Supply, January 2020, <<https://www.cobaltinstitute.org/production-and-supply.html>>; U.S. Geological Survey, 2015 Minerals Year Book, Congo (Kinshasa), <<https://prd-wret.s3-us-west-2.amazonaws.com/assets/palladium/production/atoms/files/myb3-2015-congo-kinshasha.pdf>>.

² UN Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, S/2002/1146, 15 October 2002, paragraph 22.

³ The conflict is often described in terms of two wars. The first began in 1996 when the Rwandan Army invaded the eastern Congo in support of Laurent-Desire Kabila, who eventually overturned President Mobutu Sese Seko and it ended in 1997. The second war began in 1998, when Kabila broke with his Rwandan and Ugandan allies, drawing in other nations and spawning several rebel groups. In 2002 the main rebel groups agreed the Sun City Peace Accord and, following bilateral accords, Rwanda withdrew its troops. In 2003, the All Inclusive Agreement on the Transitional Government was signed.

⁴ In 2000, the UN Security Council appointed the United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, as a response to widespread concern at the link between exploitation of gold, diamonds, and other minerals in the east of the DRC, and the war ongoing in that region since 1996. The UN Panel produced a series of seven reports: Interim report dated 16 January 2001 (S/2001/49); Report dated 12 April 2001 (S/2001/357); Addendum report dated 13 November 2001 (S/2001/1072); Interim report dated 22 May 2002 (S/2002/565); Report dated 16 October 2002 (S/2002/1146); Addendum dated 20 June 2003 (S/2002/1146/Add.1); Report dated 23 October 2003 (S/2003/1027).

⁵ UN Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, S/2002/1146, 15 October 2002. The Panel controversially identified business enterprises from outside the region that it believed to be implicated in the conflict, including over 50 OECD based companies.

⁶ UN Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, S/2001/357, 12 April 2001, paragraphs 150 – 2. See also the Panel's report S/2001/1072, 13 November 2001, paragraphs 67 – 9 and S/2003/1027, 23 October 2003, confidential Section 5, paragraphs 32 – 5.

⁷ UN Security Council, *Report of the Group of Experts on the Democratic Republic of the Congo in Accordance with Paragraph 2 of the Security Council Resolution 1654 (2006)*, S/2006/525, 18 July 2006, paragraph 132, <<https://www.securitycouncilreport.org/atf/cf/%7B65BCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/DRC%20S2006525.pdf>>.

into a multitude of corrupt schemes. By 2017, the Kabila family either partially or wholly owned more than 80 companies and businesses in the Congo and abroad, and held 120 mining permits for cobalt and other minerals.⁸

Millions of Congolese continue to experience extreme poverty, insecurity and the denial of their full range of human rights (explored further below).

“These transactions, which are controlled through secret contracts and off-shore private companies, amount to a multi-billion-dollar corporate theft of the country’s mineral assets.”

UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo

b) Gross and systematic human rights violations

3.9 million people are estimated to have died during the most intense part of the conflict.⁹ About ten percent of these deaths have been attributed to direct violence, the remainder were caused by preventable diseases such as malaria, diarrhoea, pneumonia and malnutrition when residents were unable to obtain food or access medical services due to the conflict. Human rights organisations documented grave abuses that were carried out by all parties. A 2010 report by the UN High Commissioner for Human Rights mapping out some of the worst violations between 1993 and 2003 focused on over 600 incidents and detailed grave cases of mass killings, forcible abductions, torture, rape and sexual violence, attacks on children, and other abuses by a range of armed actors, including foreign armies, rebel groups, and Congolese Government forces.

According to the World Bank, when it began to provide project support in Congo in late 2003, “Physical damage is extensive, institutions are in a shambles and the economy has literally collapsed”.¹⁰ By the time the peace accords were signed, Congo was one of the world’s poorest countries with social indicators among the worst in Africa: more than 2.4 million people internally displaced and living in extreme poverty; 37 per cent of the country’s 55 million people had no access to any kind of health care;¹¹ a third of the population —16 million people — suffered from serious malnutrition; and per capita income had actually declined from \$250 in 1990 to \$85 in 2000.

iii. *Corruption in a post-conflict state*

The extractives sector continues to be a focus for corruption and human rights violations where, in the aftermath of conflict, governance remains weak and assets are not sold through competitive tender but are disposed of for vast profit in a new round of corruption

Again, taking Congo as an example, the corrupt transfer of mineral assets during the conflict set in train a further wave of bribery and corruption in its aftermath. Both Gertler, via a company called Nikanor, and Rautenbach via the Central African Mining and Exploration Company (CAMEC), were able to launder illicitly acquired assets on the London Stock Exchange’s laxly regulated Alternative Investment Market (AIM). But this was just the first phase in an even more elaborate corruption scheme in which Gertler, Kabila and his key advisor, Katumba Mwanke, and the multi-billion US hedge fund, Och-Ziff (since renamed Sculptor), were all co-conspirators.

Further reading: [Asset laundering and AIM](#)

⁸ Congo Research Group, *All the Presidents Wealth*, 19 July 2017 <<https://pulitzercenter.org/sites/default/files/all-the-presidents-wealth-eng.pdf>>

⁹ International Rescue Committee, <<https://www.rescue.org/report/mortality-democratic-republic-congo-ongoing-crisis>>.

¹⁰ World Bank, *Emergency Economic and Social Reunification Support Project*, 11 September 2003.

¹¹ World Bank, Democratic Republic of the Congo, *Interim Poverty Reduction Strategy and Joint IDA-IMF Staff Assessment*, 24 May 2002.

a) The second wave of corruption

The review of mining licences that the Congolese government embarked on in 2007 was supposed to clear up the murky legacy of wartime contracts. Instead, a pattern began to emerge in which mining companies saw their title to concessions come under challenge in the courts or else simply be revoked. In each case, either the expropriated assets were sold to Gertler before being “flipped” for a much higher price to new buyers or else Gertler bought into and took control of the original companies on highly advantageous terms.

Over the course of 2007–2008, this happened to CAMEC (despite, or perhaps because of, Rautenbach’s Zimbabwean connections) and to Canadian junior mining company, Africo Resources. One of the most audacious “strip and flips” began in August 2009, when leading Canadian miner First Quantum Minerals saw its licence for the multi-million dollar KMT cobalt and copper concession revoked before being sold on, via a Gertler entity for a 1000 per cent profit, to London-listed Eurasian Natural Resources Corporation (ENRC).¹² The KMT mine was shut down between 2009 until late 2017, when its new owners finally re-started operations.

“...assets were sold on average at one-sixth of their estimated commercial market value. Assets valued in total at US\$1.63 billion were sold to offshore companies for US\$275 million. The beneficial ownership structure of the companies concerned is unknown.”

Africa Progress Panel

At the time, it was not clear how Gertler’s acquisitions had been funded nor whether bribes had been paid. This changed in September 2016, when the US authorities announced that New York hedge fund Och-Ziff had admitted violating the Foreign Corrupt Practices Act (FCPA).¹³ Court documents detail how Och-Ziff employees entered into agreements with Gertler to purchase shares in Congolese mining companies under his control, aware that part of their funds would be used to bribe high ranking Congolese officials to bring pressure to bear on rival companies, forcing them to relinquish their assets. Over a 10-year period, more than \$100 million was paid out in such bribes.¹¹ The three deals referred to above, alongside others, were referred to by the US Department of Justice (DOJ) as the “DRC Corruption Scheme”.

Further reading: [‘Bribery in its purest form’: Och-Ziff, asset laundering and the London connection](#)

In the UK, ENRC quit the London Stock Exchange amid a storm of controversy because of its purchase of assets stripped by Gertler from its competitors. Since 2013, ENRC has been under criminal investigation by the SFO “focused on allegations of fraud, bribery and corruption around the acquisition of substantial mineral assets”.¹⁴ At the time of writing, no charges have been filed.

The DOJ refers to ENRC’s 2010 deal to buy the Congolese mines from Gertler, “including \$50 million in cash” as part payment. According to the DOJ, Och-Ziff employees “were informed by a co-conspirator that the \$50 million was for DRC Partner [Gertler] to ‘use on the ground’ to corruptly acquire Kolwezi Tailings.”¹⁵ ENRC denies any wrongdoing, including any responsibility for the closure of the KMT mine. In 2019, it commenced legal action against the SFO over its investigation.¹⁶ Eurasian Resources Group, the owner of ENRC since its delisting in 2013, denies that any cash payments were made during the purchase of the KMT mine in 2010.

¹² Africa Progress Panel, *Africa Progress Report 2013: Equity in Extractives*, p.58.

¹³ *United States of America against OZ Africa Management GP, LLC, Plea Agreement, Cr No 16-515 (NGG)* (United States District Court Eastern District of New York), <<https://www.justice.gov/criminal-fraud/file/900276/download>>.

¹⁴ <<https://www.sfo.gov.uk/cases/enrc/>>.

¹⁵ *Plea Agreement*, Statement of Facts, 47.

¹⁶ <<https://www.telegraph.co.uk/business/2019/03/26/kazakh-miner-enrc-lodges-70m-damages-claim-against-sfo/>>.

In December 2017, Gertler was placed under US Global Magnitsky sanctions after being identified as a corrupt actor “who has amassed his fortune through hundreds of millions of dollars” worth of opaque and corrupt mining and oil deals’ using “his close friendship with DRC President Joseph Kabila to act as a middleman for mining asset sales in the DRC”.¹⁷ In June 2018, the US authorities added a further 14 entities to the original 19 companies and one associate identified as having ties to Gertler.¹⁸

Magnitsky sanctions

The US and other jurisdictions have additional ways in which they can deploy sanctions through Magnitsky-type powers, named after the activist and lawyer who died in a Russian prison after exposing large-scale corruption. In 2016, the US extended its original legislation by passing the Global Magnitsky Human Rights Accountability Act. This allows not only for asset freezes and travel bans, but also for targeted sanctions on individuals anywhere in the world responsible for committing human rights violations or acts of significant corruption. The US measures are a rare example of legislation that posits a link between human rights and corruption.

The UK has elements of Magnitsky-type powers under the Criminal Finances Act 2017. This extended the definition of “unlawful conduct” (under the Proceeds of Crime Act 2002) to that which constitutes (or is connected with) the commission of a gross human rights abuse or violation, allowing for civil recovery proceedings (freezing and recovery orders) relating to property obtained through such unlawful conduct. Section 13 of the Act entered into force on 31 January 2018.¹⁹

The Criminal Finances Act also allows for unexplained wealth orders (UWOs) and interim freezing orders where, *inter alia*, there are reasonable grounds to suspect that a person is or has been involved in serious crime, including money laundering and bribery and corruption.

Magnitsky-type provision is included in the UK’s Sanctions and Anti-Money Laundering Act 2018. This allow sanctions to be targeted at public officials, those acting in an official capacity, or those acting on behalf of public officials, whose conduct constitutes the commission of a gross human rights abuse or violation.

Following the UK’s withdrawal from the European Union, its approach to human rights sanctions is still evolving.²⁰ It remains to be seen, for example, the extent to which targeting will extend to corrupt actors, as it does in the US and Canada.²¹

In late 2019, EU foreign ministers agreed a way forward for the introduction of a European Union equivalent to the US Magnitsky Act.²²

Glencore plc, the Swiss-headquartered and London-listed mining and commodities giant, also holds assets in Congo secured by Gertler. In late 2019, the SFO announced that it was investigating Glencore on suspicions of bribery.²³ Glencore has stated that it will cooperate with the investigation.²⁴ The company has also been subpoenaed by the US authorities under the FCPA.²⁵

¹⁷ U.S. Department of the Treasury, 21 December 2017, ‘United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe’, <<https://home.treasury.gov/news/press-releases/sm0243>>.

¹⁸ U.S. Department of the Treasury, 15 June 2018, ‘Treasury Sanctions Fourteen Entities Affiliated with Corrupt Businessman Dan Gertler Under Global Magnitsky’, available at: <<https://home.treasury.gov/news/press-releases/sm0417>>.

¹⁹ Criminal Finances Act 2017 (Commencement No. 4) Regulations 2018, <https://www.legislation.gov.uk/uksi/2018/78/pdfs/uksi_20180078_en.pdf>.

²⁰ See, for example, the position set out in its 3 September letter to the Foreign Affairs Committee: <<https://publications.parliament.uk/pa/cm201719/cmselect/cmfaff/2642/264203.htm>>.

²¹ See, for example: <<https://www.euronews.com/2019/12/23/magnitsky-sanctions-are-coming-what-form-they-ll-take-depends-on-the-eu-and-uk-view>>.

²² <<https://www.euractiv.com/section/justice-home-affairs/news/eu-ministers-break-ground-on-european-magnitsky-act/>>.

²³ <<https://www.sfo.gov.uk/cases/glencore-group-of-companies/>>.

²⁴ <<https://www.glencore.com/media-and-insights/news/investigation-by-the-serious-fraud-office>>.

²⁵ <<https://www.glencore.com/media-and-insights/news/Subpoena-from-United-States-Department-of-Justice>>.

b) Consequences for human rights

Each of the three deals has also been the focus of research and analysis by RAID, both before and after the US court action. In each case, the link between corruption and the violation of human rights is apparent.

Firstly, in respect of the KMT mine, RAID's concern has been on how people living in communities on or adjacent to the mining concessions have suffered direct harm because corruption has deprived them of their livelihoods, denied them access to health and social care, and condemned them to live in a polluted environment without access even to clean water.

Further reading: [Congo's Victims of Corruption](#)

Secondly, of the US\$150 million from Och-Ziff used by Gertler to gain control over CAMEC, US\$100 million was immediately transferred to the Mugabe regime, breaching sanctions. The money was used to finance a campaign of violence against political opponents.

Thirdly, the taking of Africo's Kalukundi project has highlighted the failure of the World Bank's International Finance Corporation (IFC), a key investor in the project, to act on the corruption risk at the time or to join a shareholder action to seek restitution from Och-Ziff, including on behalf of the Congolese victims (see section 4, below).

Corruption, harm and human rights: the KMT copper and cobalt mine in Congo

It is broadly accepted that corruption undermines the full realisation of human rights.²⁶ Yet, there appears to be a disconnect between anti-corruption and human rights protection efforts, with both spheres often working independently, each "[with their] own legal treaties, conventions, and standards".²⁷ This disconnect can be overcome by applying a victim-centred approach to corruption, which makes it immediately apparent that many of the harms suffered are also human rights violations.²⁸

The KMT mine, a rich copper and cobalt tailings site, was considered one of the crown jewels of Congo's mining assets. First Quantum's mining project had held great promise for local residents. IFC was a key investor and required First Quantum to provide concrete social and environmental benefits for local communities and higher standards for local workers.

It is apparent that, because of the "DRC Corruption Scheme", identified by US justice officials, the KMT mine was forced to close and did not re-open for nine years. The harm caused to thousands of Congolese working at or living near the mine was simultaneously a violation of their human rights.

The first group of victims are 32,000 residents living in twelve communities on or near the KMT mining concession. The ending of vital community development projects and IFC commitments caused specific harms, each with an attendant right.²⁹ These included:

²⁶ See, for example, 'The Human Rights Case Against Corruption' (*Office of the United Nations High Commissioner for Human Rights (OHCHR)*, 27 March 2013) <<https://www.ohchr.org/EN/NewsEvents/Pages/HRCASEAGAINSTCORRUPTION.aspx>>, citing Navi Pillay, former UN High Commissioner for Human Rights: "Corruption is an enormous obstacle to the realization of all human rights – civil, political, economic, social and cultural, as well as the right to development".

²⁷ Morten Koch Andersen, 'Why Corruption Matters in Human Rights' (2018) 10 *Journal of Human Rights Practice* 179.

²⁸ Barkhouse Angela, Hugo Hoyland and Marc Limon, 'Corruption: A Human Rights Impact Assessment - a Policy Brief' (Universal Rights Group and Kroll 2018) <<https://www.universal-rights.org/urg-policy-reports/corruption-human-rights-impact-assessment/>> .

²⁹ At the time of this report's publication, of the benefits outlined, only the provision of clean drinking water had been provided to nine affected communities in 2018. The vast majority of the residents living near to the mine remain deprived of the other benefits the KMT project intended to provide. ERG informed RAID in May 2019 that other development projects had been or would be implemented.

- The **provision of clean drinking water**. Instead, people were forced to drink polluted river water, which First Quantum tests had shown was not fit for human or animal consumption. This violated their rights to clean water and an adequate standard of living.³⁰
- A plan to **alleviate air and water pollution** by reprocessing old tailings and storing them in covered storage facilities, with associated efforts to reduce dust levels. The continued pollution of the environment has violated the right to a clean and healthy environment.³¹
- Programmes to facilitate **access to education and healthcare** by building schools and health clinics, as well as the direct provision of healthcare through vaccination and malaria prevention campaigns. The failure to realise such provision has violated rights to health³² and education.³³
- **Resettlement of a small traditional village of 80 residents**, whose proximity to the tailings storage facility made it unsafe, through the provision of new homes in a nearby area, a borehole for clean drinking water and new agricultural land and assistance. The resettlement did not take place until 2019, in the interim impacting rights not only to clean water, but also to housing.

“We have no other source of water than the river, so even if it looks polluted, we have to use that water.”

Resident living near the KMT mine

The second group consists of an estimated 700 Congolese workers who lost their jobs when the mine shut. Overnight, these workers lost not only their paid employment, but also valuable free healthcare for themselves and their immediate family. Thus, not only did the forced closure directly violate the right to work, but it also indirectly undermined the right to an adequate standard of living and the right to health.

Many of the workers were on contracts linked to the construction phase of the mine, which still had several months to run. Had First Quantum’s mining permit not been cancelled, company documents confirm that many of the workers would have been kept on once operations commenced. Based on interviews with 175 former workers, RAID and AFREWATCH found that almost none were re-hired by ERG. Instead, in an environment of extreme poverty with few jobs, the vast majority of the former workers were unable to find other employment, despite their best efforts.

³⁰ In 2010, the United Nations General Assembly explicitly recognised the right to water and sanitation and acknowledged that clean drinking water and sanitation are “essential for the full enjoyment of life and all human rights”: The United Nations General Assembly, ‘Resolution A/RES/64/292, Sixty-Fourth Session, Agenda Item 48’. Further, the Human Rights Council affirmed that the “human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity”: The UN Human Rights Council, ‘Resolution RES/15/9 Human Rights and Access to Safe Drinking Water and Sanitation’ <<https://www.right-docs.org/doc/a-hrc-res-15-9/>>. The Universal Declaration of Human Rights (UDHR) states that everyone has the right to “a standard of living adequate for [his or her] health and well-being” (art. 25) mirrored in the International Covenant on Economic, Social and Cultural Rights (ICESCR) as the right to an “adequate standard of living” (art. 11) and the right of everyone to “the enjoyment of the highest attainable standard of physical and mental health” (art. 12). In 2002, the United Nations Committee on Economic, Social and Cultural Rights included the right to water in these two rights, defining them as the right of everyone “to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” and as “indispensable for leading a life in human dignity”: General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant) 2003 (E/C12/2002/11). The right to clean water and sanitation is also part of the Sustainable Development Goals proposed by the UN. At the regional level, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa contains an obligation to “provide women with access to clean drinking water” (art. 15).

³¹ The African Charter on Human and Peoples’ Rights, article 24; see also Jonathan Watts, ‘UN Moves towards Recognising Human Right to a Healthy Environment’ *The Guardian* (9 March 2018) <<https://www.theguardian.com/environment/2018/mar/09/un-moves-towards-recognising-human-right-to-a-healthy-environment>>.

³² Art. 12.2(d) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), see also General comment No. 14: The right to the highest attainable standard of health (Art. 12) 2000 (E/C12/2000/4).

³³ The Universal Declaration of Human Rights (UDHR), article 26; the International Covenant on Economic, Social and Cultural Rights (ICESCR), articles 13 and 14 and The African Charter on Human and Peoples’ Rights, article 17.

Corruption, sanctions-busting and political violence in Zimbabwe

There can be no clearer link between business, corruption and human rights abuse than the intersection of the “DRC Corruption Scheme” with the violent suppression by the Mugabe regime of political opponents in Zimbabwe.

In the 2008 election, ZANU-PF’s Robert Mugabe retained the presidency of Zimbabwe after a campaign of horrific brutality against Movement for Democratic Change (MDC) supporters. According to media reports and senior MDC officials, the violence was financed by money originating from Och-Ziff and channelled to the Mugabe government via a loan as part of a lucrative platinum deal by CAMEC.

In April 2008, CAMEC acquired a majority holding in a Zimbabwean platinum joint venture. As part of this transaction, it advanced a US\$100 million loan to comply with “contractual obligations” to the Government of the Republic of Zimbabwe. Regulatory news releases indicate that the money for the loan came from OZ Management LP, a subsidiary of Och-Ziff. Furthermore, it was strongly suspected, and later confirmed, that the Mugabe ally, Billy Rautenbach, was behind the offshore company selling the stake in the platinum mine.

The action taken by the US against Och-Ziff has since confirmed that Och-Ziff’s transaction with Gertler to purchase shares in CAMEC was the first part of the “DRC Corruption Scheme” to bring Congolese mining concessions under the control of the co-conspirators.³⁴ The US authorities refer to the transaction in Zimbabwe to buy platinum assets, the diversion of the Och-Ziff loan to a Zimbabwean political party and the use of Och-Ziff’s investment to pay for an arms shipment from China.³⁵

The Mugabe regime’s campaign of violence subverted democratic elections. The funds were used to pay for weapons, trucks, and the dispatch of youth militias and war veterans to crush the opposition. Up to 200 people were killed, 5,000 more were beaten and tortured, and 36,000 people were displaced.

“All the heartache, pain, gerrymandering, violence, intimidation, repression that took place at the 2008 election is directly linked to that 100 million.”

MDC opposition spokesperson

The Zimbabwe platinum deal was *prime facie* a breach of sanctions. Mugabe and his key allies in the government, ZANU-PF, and the military, were all on EU and US sanctions lists at the time of the transaction. Furthermore, the transaction prompted both first the US, and then the EU, to add Rautenbach and various of his companies to the sanctions list. Yet no company or individual has ever been held to account for breaching sanctions. Far from preventing the platinum mine purchase or the later sale of shares controlled by sanctions targets, it appears the UK authorities approved or licenced the transactions. The Treasury relied on an exemption under the UK’s freedom of information law to refuse to disclose any information relating to these matters.

³⁴ United States of America against Och-Ziff capital Management Group LLC, *Deferred Prosecution Agreement*, Cr. No. 16-516 (NGG), United States District Court Eastern District of New York, 29 September 2016, <<https://www.justice.gov/opa/file/899306/download>>, Statement of Facts, 28, THE DRC CORRUPTION SCHEME, A. Och-Ziff’s Agreements with DRC Partner.

³⁵ U.S. Securities and Exchange Commission, *Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order* [“SEC Order”], against Och-Ziff Capital Management Group LLC, OZ Management LP, Daniel S. Och, Joel M. Frank, Securities and Exchange Act of 1934 *Release No. 78989*/September 29, 2016, Investment Advisers Act of 1940 *Release No. 4540*/September 29, 2016, Administrative Proceeding *File No. 3-17595*, <<https://www.sec.gov/litigation/admin/2016/34-78989.pdf>>, B. Suspicious payments in Zimbabwe, 48 – 52; *Deferred Prosecution Agreement*, Statement of Facts, 43.

B. Operational level: paying with your life for traces of gold

Elements of corruption and human rights abuse apparent at the macro-level are also apparent at the local level when a high-value mine dominates its hinterland. Thus, corruption in several guises and the violations that result can be equally systemic, self-perpetuating and all pervasive at the operational level.

The North Mara gold mine, located in a remote part of northern Tanzania, has been plagued by reports of serious human rights abuses against local community members by security forces since it was acquired in 2006 by Barrick Gold, one of the largest gold mining companies in the world.³⁶ The name of the mine's immediate parent company was changed to Acacia Mining plc in 2010, while Barrick retained a majority holding. In 2019 Barrick bought out the minority shareholders and took the company back into its full ownership.³⁷

RAID's purpose in drawing upon our research on the North Mara mine in the context of this submission to the Working Group is to highlight: (i) how business-related human rights violations can occur when a mine producing high-value product is imposed upon poor communities in a way that further exacerbates poverty; and (ii) embeds bribery and corruption in a volatile security situation. A final aspect – how a co-opted police force undermines access to justice and remedy – is discussed in section 2, below.

i. Violations at a mine that disrupts poor communities

The North Mara gold mine comprises open and underground pits, a processing plant, and a tailings and waste rock dump. Covering an extensive area, it is sited in the middle of seven villages, cutting across communities, traditional lands, roads and paths. The mine is located within a region where less than 10% of the rural population have completed secondary education, over 30% are illiterate and the primary economic activity is small scale agriculture.³⁸ Residents carried out artisanal mining activities long before industrial mining operations began. Allied to poverty and a lack of an alternative means of making living are factors attributed to the arrival of the mine, including disputes over land, environmental damage and allegations of corruption.³⁹ Those who enter the mine site (so-called "intruders") therefore do so in a context where the company lacks legitimacy among residents, and many see little or no benefit from the company's presence in the midst of their communities. Locals accused by the company of trespassing are often simply seeking a way to supplement their income to clothe, feed and educate their families.

The consequences of being caught within the mine site or even being in its vicinity are often deadly. RAID and MiningWatch Canada, working with local partners, have visited North Mara repeatedly and have documented 22 killings and 69 injuries at or near the mine from 2014 to 2016 alone.⁴⁰ A 2016 Tanzanian parliamentary inquiry received reports of 65 killed and 270 injured by police jointly responsible for mine security.⁴¹ From 2014 to 2017, Acacia itself acknowledged 6 deaths relating to the use of force against intruders and/or police involvement and 28 other "intruder fatalities", which it attributed to "fall from height", "infighting", "drowning", "rockfall", "vehicle accident", and "other".⁴² RAID has sought further information on these deaths, but none has been provided.⁴³ Furthermore, the company provides no information on injuries to "intruders", which is anomalous

³⁶ <http://www.raid-uk.org/sites/default/files/raid_report_on_private_grievance_mechanisms_final_12_june_2019.pdf>.

³⁷ <<https://www.barrick.com/AcaciaMining/>>.

³⁸ <<https://www.nbs.go.tz/index.php/en/regional-profiles>>.

³⁹ <<https://www.raid-uk.org/blog/acacia-mining%E2%80%99s-hour-reckoning-tanzania>>.

⁴⁰ <https://www.raid-uk.org/sites/default/files/adding_insult_to_injury_north_mara.pdf>.

⁴¹ <<https://www.theglobeandmail.com/report-on-business/international-business/african-and-mideast-business/police-killed-65-injured-270-at-tanzanian-mine-inquiry-hears/article32013998/>>.

⁴² <<https://www.acaciaminging.com/~media/Files/A/Acacia/reports/2018/2017-acacia-annual-report-accounts.pdf>>.

⁴³ <http://www.raid-uk.org/sites/default/files/follow-up_questions_from_raid_to_acacia_mining_july_2018.pdf>.

given the high incidence of injuries referred to by the parliamentary inquiry and the number of serious and life-changing injuries reported to RAID. Despite widespread attention and calls for reform at the mine, the abuses have continued.⁴⁴

The mine's engagement of the local police, which it pays, equips and accommodates to provide security in and around the mine site is central to the problem. The mine continues to employ the police despite this pattern of excessive use of force over many years against local residents on and off the mine site.

ii. Corruption and bribery in a volatile security situation

When it comes to the connection between bribery, corruption and human rights violations at the local level, a system operates by which intrusion and access to the mine site is encouraged and controlled through the payment of bribes.

During interviews in communities near the mine, RAID has been informed that the police or security personnel solicit bribes from would-be intruders, encouraging people to enter the mine site to collect rocks, and thereby blurring the distinction between enforcers and "trespassers". It has been alleged, in detailed journalistic reports, that that "the company is aware of the widespread reports that the police allow the intrusions in exchange for bribes" and that the police act as gatekeepers, "accused of barring some villagers while accepting bribes from others to let them enter".⁴⁵

Reports by a Tanzanian legal group and by the District Commissioner into the fatal shooting of five individuals at the mine site in May 2011, describe the systematic nature of the operational-level bribery scheme.⁴⁶ The former report states that the proceeds from bribes were sufficient to enable police officers to purchase businesses and vehicles.

The solicitation and payment of bribes, because of its illegality, places "intruders" in a particularly vulnerable position. Police officers have been reported to use violence when there is a dispute over the bribe amount or who is to be the recipient.

⁴⁴ <<https://www.raid-uk.org/blog/acacia-mining-faces-new-human-rights-problems-tanzania>>.

⁴⁵ <<https://www.theglobeandmail.com/report-on-business/international-business/african-and-mideast-business/police-killed-65-injured-270-at-tanzanian-mine-inquiry-hears/article32013998/>>; <<https://www.theglobeandmail.com/report-on-business/rob-magazine/barricks-tanzanian-project-tests-ethical-mining-policies/article559188/?page=all>>.

⁴⁶ <https://www.academia.edu/7827818/KILLINGS_AROUND_NORTH_MARA_GOLD_MINE_THE_HUMAN_COST_OF_GOLD_IN_TANZANIA-THE_SHOOTINGS_OF_THE_FIVE>; and <<https://www.raid-uk.org/sites/default/files/Commission%20of%20Inquiry%20Report%20%28English%29%20re%20North%20Mara%202011.pdf>>.

2. Corruption and access to remedy

Q5. How does corruption and corrupt activities impact the ability of victims to seek access to an effective remedy (both judicial and non-judicial)? What measures can States and companies take to address these challenges?

Q5+. How do community-level victims of corruption, including the poor and marginalised, gain access to an effective remedy in anti-corruption proceedings?

A. High-level corruption and access to remedy

i. Corruption undermining the rule of law

In weak-governance and destabilised states, there is a high risk that bribery and corruption will undermine independence in the review/allocation of contracts or pervert the course of justice, preventing competitors, owners and shareholders from receiving fair remedy. Corruption of policy makers and the judiciary undermines the rule of law and the functioning of government in *all* its aspects. Ultimately, the human rights of the poorest and most vulnerable are violated because corruption engenders a disregard for environmental protection, land rights, security, social provision, and sustainable livelihoods.

Returning to the example of post-conflict Congo, it is apparent the review process that was supposed to establish the fairness or otherwise of wartime mining contracts was subverted by corruption. Instead, it became a means by which elite co-conspirators expropriated concessions and advanced their corruption scheme.

There was widespread recognition among international donors that assets and mineral reserves belonging to the state mining company's (La Générale des Carrières et des Mines, "Gécamines") had not been subject to prior independent evaluation before being privatised.⁴⁷

In April 2007, the *Commission de Revisitation des Contrats Miniers* (MCRC) was set up to examine the partnership contracts "with a view to correcting any imbalances and related faults."⁴⁸ In February 2008, an international coalition of non-governmental organisations warned that new deals were being struck behind closed doors, outside of the opaque and incomplete review process.⁴⁹ The Commission eventually recommended renegotiation of two-thirds of the contracts and the cancellation of the remainder, but the final negotiations were handled *in camera* by "a specially constituted panel" of senior government officials, criticised at the time by the World Bank because "the possibility exists of corrupting influences or inappropriate behavior within the panel itself and/or the negotiating team."⁵⁰ The final phase of negotiations left many apparently seriously flawed contracts untouched, raising doubts about the impartiality and integrity of the whole process.

First Quantum resisted the pressure to renegotiate and its KMT project was cancelled in August 2009.⁵¹ Similarly, the review decided that Africo's Kalukundi contract would need to be renegotiated,

⁴⁷ Craig Andrews, Principal Mining Specialist, COCPO (oil, gas and mining policy division of the World Bank), Office Memorandum to Pedro Alba, Country Director DRC, 8 September 2005, *Contracts between Gécamines and Private Companies*.

⁴⁸ *Arrêté ministériel* no 2745/cab.min/Mines/01, 20 April 2007.

⁴⁹ RAID, Global Witness et al., 4 February 2008, 'NGOs fear that DRC mining contract review process has been hijacked,' available at: <<https://www.globalwitness.org/en-gb/archive/ngos-fear-drc-mining-contract-review-process-has-been-hijacked/>>.

⁵⁰ World Bank, 'Democratic Republic of Congo: Growth with Governance In the Mining Sector Technical Assistance Project', *Report No. 43402-ZR*, May 2008, p.48, <<https://siteresources.worldbank.org/INTOGMC/Resources/336099-1156955107170/drcgrowthgovernanceenglish.pdf>>.

⁵¹ First Quantum Minerals Limited, 'First Quantum Minerals Announces Commencement Of International Arbitration Regarding The Cancellation Of The Kolwezi Project', 1 February 2010, available at: <https://s1.q4cdn.com/857957299/files/doc_news/NR-10-08-InternationalArbitration.pdf>; 'First Quantum Minerals Provides RDC Legal Update', 30 March 2010, available at: <https://s1.q4cdn.com/857957299/files/doc_news/NR-10-15.pdf>.

highlighting unresolved issues surrounding the provenance and ownership of the concession.⁵² Further details have since emerged from the Och-Ziff action. According to the DOJ, \$500,000 was paid by the co-conspirators in the Africo case “to corruptly influence the outcome of those proceedings to the benefit of Och-Ziff and DRC Partner [Gertler]”.⁵³ This corrupt influence extended to the highest legal circles:⁵⁴

On or about June 5, 2008, an associate of DRC Partner sent a text message to DRC Partner, which stated: “[lawyer] has met attorney general and the magistrat[e] that has to write the opinion, he also had contact with the 3 judges of supreme court. they got clear instructions to rewrite the opinion and to make sure that akam [the company used by Gertler to challenge Africo’s title] wins...”

In terms of ultimate redress and access to justice, while continuing court action against Och-Ziff under the FCPA has recently resulted in former Africo shareholders being accepted as victims of the stolen Kalukundi project, the harm done to Congolese victims in local communities has not been recognised. Regrettably, IFC too has fallen short when it comes to advancing a claim on their behalf (see section 4, below).

ii. *Community-level access to remedy*

The question of how the community-level victims of corruption – the impoverished, marginalised and vulnerable – achieve any kind of recognition, let alone redress, in anti-corruption proceedings must also be addressed.

One of the main obstacles for victims of business and human rights abuses in using anti-corruption mechanism to seek remedies lies in the fact that the anti-corruption agenda is not geared towards victims. Its primary focus is on market efficiency and economic performance (seeing corruption as a market failure). This impetus leads to an approach of criminalisation, sanctions and compliance, which is believed to be the best avenue to suppress the risk of corruption. It places the focus on the perpetrators, to either lessen the risk of corruption and bribery (compliance) or sanctioning wrongdoing.⁵⁵ It was not founded on acknowledging victims or the damage cause by such crimes. There have been few avenues of redress for victims because their existence has not been recognised in the anti-corruption sphere. However, albeit incrementally, this perspective is shifting, debunking the belief that “corruption is a victimless crime”.

Any notion that corruption has no impact on people in their daily lives could not be further from the truth (see above, the box on the harm caused to people in Congolese mining communities). There are, however, two key challenges. Firstly, the prevailing narrow definition of who constitutes a victim; and, secondly, the predominance of the state as the vehicle for compensation.

Defining who are victims of corruption is linked to the comprehension of the harm caused. The conventional view, often reinforced by courts, is that corruption predominately causes financial or economic harm. Those recognised as victims are limited to *bona fide* businesses losing tenders, shareholders that lost on their investment, or public entities that overpaid for a contract. In the latter instance, the reduction in public revenue stunts economic growth and erodes the provision of public services.

⁵² *Tableau d’évaluation et de classification des contrats :Rapport des Travaux de la Commission de Revisitation des Contrats Miniers*, Kinshasa, October 2007.

⁵³ *Deferred Prosecution Agreement*, Statement of Facts, 38.

⁵⁴ *Ibid.*, 40.

⁵⁵ U4, Corruption and human rights, <<https://www.u4.no/topics/human-rights/basics>>.

The perception that corruption only causes economic damages leads to an overemphasis on foreign states as overseas victims of corruption. Because the harm is viewed purely as a loss of public revenue, then the only possible victim is the general public interest.⁵⁶ According to Ramasastry, “since everyone might be a victim (i.e. society) no one is perceived a victim in cases of grand corruption and large-scale bribery”.⁵⁷ This narrow financial and economic perception of the impact of corruption does not acknowledge further harms, especially at the local and community levels, such as environmental damage, neglect of social provision, or the sudden loss of employment. Conventionally, there is little room for collective claims where an act of corruption has harmed an entire community.

Overseas compensation in the UK

Overseas corruption cases concluded by the SFO illustrate that there are some nascent attempts to compensate victims, although the narrow concept of the state as victim still predominates. Out of the £603 million penalties imposed on companies in overseas bribery and corruption cases by the SFO between 2015 and 2019, only £33 million was levied for compensation. Of the latter, 80 per cent was allocated directly to host States where the corruption occurred. While some interesting workarounds have been used to allocate funds to minimise the risk of re-corruption – such as in the case of *Smith and Ouzman*,⁵⁸ in which the UK government provided seven ambulances to the Kenyan government – the State has remained the main recipient. Victims directly harmed by the corruption were not recognised or compensated by the courts in any of these overseas cases.

This overemphasis on state as victim is compounded by the lack of clear definition of who can be a victim of corruption. The UN Convention Against Corruption (UNCAC), the pre-eminent international anti-corruption treaty, does not itself provide a clear definition of victims, although it does mandate State Parties to take measures to ensure that entities or persons who have suffered damages as a result of an act of corruption have access to legal proceedings to be compensated.⁵⁹ Ramasastry argues that this provision lays the foundation for individuals harmed by acts of corruption to file possible legal claim for damages.⁶⁰ Moreover, recent thinking is helping to redefine both harm and victims. UNCAC’s Working Group on Asset Recovery emphasises that “compensation should not be based on a narrow interpretation of damage but on a full analysis of the broader harm caused by an act of corruption. This should include recognition of collective damage or social harm”.⁶¹ The World Bank also recognises that corruption has a disproportionate impact on the poor and most vulnerable.⁶² Navi Pillay, the former High Commissioner for Human Rights said, “Corruption is an enormous obstacle to the realization of all human rights – civil, political, economic, social and cultural, as well as the right to development”.⁶³

A wider consideration of both who the victims of corruption are and what constitutes the harm they have suffered has the potential to inform legal redress. For example, at the May 2016 Anti-Corruption Summit, the UK pledged to compensate the overseas victims of corruption and return stolen assets. In June 2018, the UK government adopted *General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases* (the "Compensation

⁵⁶ United Nations Office on Drugs and Crime, The Global Programme Against Corruption UN Anti-Corruption Toolkit, 2nd Edition, Vienna, February 2004, <https://www.unodc.org/documents/corruption/Toolkit_ed2.pdf>, mentioning that “Corruption is not a ‘victimless’ crime, however; the only victim in many cases is the general public interest”, p. 415

⁵⁷ Anita Ramasastry, ‘Is there a Right to Be Free from Corruption?’, Legal Studies Research Paper No. 2017-07, 49 UC Davis Law Review 703-39, 2015, p. 706, available at: <https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Ramasastry.pdf>.

⁵⁸ *R v Smith & Ouzman & Others* (2016), Crown Court at Southwark.

⁵⁹ The *United Nations Convention against Corruption* (UNCAC), article 35.

⁶⁰ Anita Ramasastry, ‘Is there a Right to Be Free from Corruption?’, op cit.

⁶¹ Open-ended Intergovernmental and Working Group on Asset Recovery, ‘Good Practices in Identifying the Victims of Corruption and Parameters for Their Compensation - CAC/COSP/WG.2/2016/CRP.1’, <<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>>.

⁶² ‘Combating Corruption’ (World Bank, 4 October 2018), <<https://www.worldbank.org/en/topic/governance/brief/anti-corruption>>.

⁶³ ‘The Human Rights Case Against Corruption’ (Office of the United Nations High Commissioner for Human Rights (OHCHR), 27 March 2013), <<https://www.ohchr.org/EN/NewsEvents/Pages/HRCCaseAgainstCorruption.aspx>>.

Principles").⁶⁴ The principles are progressive in establishing that law enforcement agencies shall identify overseas victims in all relevant cases and consider compensating them by using whatever legal mechanisms are available.

The Compensation Principles state that “victims could include affected states, organisations and individuals”. Thus, the Compensation Principles appear to allow prosecutors to present a range of victims when it comes to seeking appropriate compensation. Prosecuting agencies, including the Serious Fraud Office, will need to rethink who the actual victims are and what social, environmental and economic harm has been caused to them. This necessitates looking beyond “the State” as the victim, especially in cases where senior government officials have been involved in the corruption.

Existing legislative tools in the UK can be drawn upon which already recognise different types of victims and harms. One example is the Community Impact Statement (CIS), which acknowledges that a community, and not only individuals, can be impacted by a crime. CISs are used throughout the justice system to enable better-informed decisions related to the crime⁶⁵, such as charging decisions, sentencing, restorative justice and reparation intervention. A CIS sets out the harm caused and the impact on the community, which could include “social, financial, physical, environment, economic or other specific impacts or concerns”,⁶⁶ all of which could apply to the type of harms suffered by local communities and former workers as a consequence of the “DRC Corruption Scheme”.

In the UK, the Sentencing Council, which publishes guidelines for the judiciary, has set out a “Definitive Guideline for Fraud, Bribery and Money Laundering Offences”.⁶⁷ This requires courts to weigh the harm caused in bribery cases in their sentencing. The Definitive Guideline provides for the conventional view of harm when it comes to corporate bribery (normally the “gross profit” gained by the offending company). When it comes to bribery committed by individuals, the Definitive Guideline considers much broader harm, including environmental harm and serious detrimental effects on individuals, such as the provision of substandard goods or services. The harms experienced by local Congolese communities (as set out in this report) via the continued environmental pollution, loss of healthcare, loss of access to education, halting of community development projects and the abandonment of IFC standards and oversight are therefore potentially captured under the Definitive Guideline. However, it would be much better if this broad assessment of harm applied not just to individual perpetrators, but also to corporate offenders.

Sentencing guidelines are used at the end of the judicial process, which highlights the current lack of prior victim participation. For the impact of a crime to be fully acknowledged, victims ought to be given a voice early in the proceedings, starting at the investigation stage. In the UK, both the Code of Practice for Victims of Crime and the SFO’s publicly posted information for victims and witnesses establish, respectively, binding obligations and commitments on how victims will be treated throughout a case (see box, below, for further details).⁶⁸

⁶⁴ <<https://www.cps.gov.uk/sites/default/files/documents/publications/General-Principles-to-compensate-overseas-victims-December-2017.pdf>>.

⁶⁵ ‘Community Impact Statements - Adult (Ministry of Justice Guidance)’ (*The Crown Prosecution Service*, 30 June 2017), <<https://www.cps.gov.uk/legal-guidance/community-impact-statements-adult-ministry-justice-guidance>>.

⁶⁶ Department of Justice, ‘Making a Community Impact Statement: A Chance to Explain How a Crime Significantly Affects a Community, as an Indirect Victim’, <<https://www.justice-ni.gov.uk/sites/default/files/publications/doj/making-a-community-impact-statement.pdf>>.

⁶⁷ The Sentencing Council, ‘Fraud, Bribery and Money Laundering Offences: Definitive Guideline’, <<https://www.sentencingcouncil.org.uk/wp-content/uploads/Fraud-Bribery-and-Money-Laundering-offences-definitive-guideline-Web.pdf>>.

⁶⁸ Ministry of Justice, ‘Code of Practice for Victims of Crime’, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF>. ‘Information for Victims, Witnesses and Whistleblowers - Our Commitment to You’, (*Serious Fraud Office (SFO)*, 8 May 2019), <<https://www.sfo.gov.uk/publications/information-victims-witnesses-whistleblowers/>>.

Congolese residents come forward as potential victims

In January 2020, RAID advocated that the SFO, the preeminent UK agency charged with tackling overseas corruption, should actively work to implement the Compensation Principles. The SFO's longstanding criminal investigation into ENRC Ltd (previously ENRC plc) provides an important opportunity to apply the Compensation Principles and ensure that potential Congolese victims are identified as part of the investigation. In the event any party is convicted at the conclusion of that investigation, those Congolese victims must be compensated.

RAID assisted 16 Congolese residents to come forward under the UK's Code of Practice for Victims of Crime. The group includes local chiefs, community representatives and former workers at the KMT mine, acquired by ENRC. The Victims Code establishes rights for victims, including their right to understand their role in any proceedings and to be understood, to be kept informed of progress in a case, and to be given reasons if a prosecution is dropped, including the right to request a review of any such decision. The SFO has made clear that the Victims Code applies equally to overseas victims.

An important principle is that victims are being acknowledged and their voices heard at an early stage in proceedings. Moreover, they do not have to carry the cost of litigation, as it is for the SFO to demonstrate corruption and harm. A potential disadvantage is that they have less control over what strategy is taken, what evidence will be put forward and what remedy will be sought.

B. Operational level corruption and access to remedy

The Working Group refers to the protect-respect-remedy framework, as implemented through the United Nations Guiding Principles on Business and Human Rights ('UNGPs'). The focus in this section of the submission is upon the element of remedy in the framework.

While many different approaches to remedy – state-based judicial (criminal and civil) and non-judicial processes, non-state-based grievance mechanisms – are referenced by the UNGPs, there is insufficient guidance upon when a certain type of mechanism should or should not be used. This may appear pragmatic, allowing different solutions to be pursued in different contexts, but the undifferentiated guidance has allowed companies to legitimise their intervention when shifting remediation from the public to the private sphere, even in cases of serious human rights violations.

The United Nations Convention Against Corruption expresses concern about "the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law." This understanding of the effects of corruption can extend to a business's relationship with co-opted state security forces. As set out in UNCAC, articles relating to "trading in influence" and "abuse of functions" are potentially engaged, forms of corruption that have a detrimental effect upon the realisation of a number of civil rights, including security of the person and the rights to equal protection under the law and to effective remedy.

RAID's analysis in this section is informed by our work on the North Mara mine. As noted, the company pays the state police to provide security on an ongoing basis. In doing so, it subverts the institutional independence of state law enforcement, becoming a source of funding and other benefits for the police that the police risk losing if they act counter to the company's interests. Thus, there is an element of co-option in the company's relationship with the police.

Co-option of state security forces, including the police force, has a threefold effect on access to justice and access to remedy. Firstly, the company becomes complicit in protecting the police and its relationship with the police by dealing with any complaints through a grievance mechanism over

which it has complete control, and which is designed to protect its interests. Secondly, the police commit violations with impunity. Finally, they engage in intimidation of those injured, or the relatives of those killed, on the mine site.

Further reading: [Human Rights Violations Under Private Control](#)

Police violence at North Mara mine

Tanzanian police stationed at the North Mara mine have been responsible for:

- Shootings, causing death and severe injuries.
- Leaving people to bleed to death from gunshot wounds.
- Severe beatings, resulting in broken bones and life-changing injuries, including paralysis.
- Throwing rocks down on people, killing at least one man in this manner.
- Firing ‘non-lethal’ rounds and teargas at close range, causing serious wounds.

A stark illustration of the impossibility of victims being able to access justice either in the domestic courts or through the company’s grievance mechanism is that fact that there have been two lawsuits filed in the UK for deaths and injuries at the mine. The first lawsuit commenced in 2013 and was settled in 2015 by Acacia Mining.⁶⁹ The second lawsuit was issued in February 2020 and includes the father of a nine year-old girl runover and killed by a mine vehicle, driven without due care, on 19 July 2018.⁷⁰ The young girl’s stepmother and other women who had gathered around the body, and whose claims were also issued, say they were injured when security personnel and/or the police fired on them without warning. The claimants further include a 16-year-old youth who says he was shot in the back and then beaten by the police employed by the mine, and a man who says he was seriously assaulted by the police on the mine site.

3. Remedy through anti-corruption and business-related human rights mechanisms

Q6. *Are there ways in which victims of business and human rights related abuses used anti-corruption mechanisms to seek remedies for human rights abuses?*

The Working Group’s guiding question (Q6) on the use of anti-corruption mechanisms to address business-related human rights abuse raises several important issues.

Firstly, a distinction can, of course, be made between judicial and non-judicial mechanisms in both spheres. As bribery and corruption are often considered under the criminal law in financial terms, who the victims are and how harm is defined and quantified has been very narrowly focused. Consequently, overseas victims have been excluded, alongside the social, environmental and development-related harm they have suffered. Thus, there needs to be a fundamental shift if the prosecution of corruption and bribery is to consider and remedy harm to human rights. Another consequence is that non-judicial anti-corruption mechanisms, whether part of company-based or multi-stakeholder complaints processes, are unlikely to be considered the most appropriate forum when criminal activity may have occurred. Indeed, an existing criminal investigation may simply preclude their use.

⁶⁹ <<https://www.leighday.co.uk/International/Corporate-accountability/Security-human-rights/Tanzania>>.

⁷⁰ <<https://www.raid-uk.org/blog/tanzanian-victims-commence-legal-action-uk-against-barrick>>.

Secondly, in RAID's experience, when considering non-judicial or quasi-judicial mechanisms, raising complaints about the harm caused by corruption or other economic crimes is often achieved obliquely by framing such complaints directly in terms of human rights violations.

In 2013, RAID and its Congolese partner brought a complaint to the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises against ENRC on behalf of Kisankala and Lenge residents, local communities that border the Kalukundi concession.⁷¹ In February 2016, as well as finding that "ENRC [had] not met the obligation to address human rights impacts with which it [was] involved,"⁷² the NCP also found ENRC had "not taken adequate steps to address impacts on the communities that arise from delays in taking forward its mining projects." RAID and/or AFREWATCH conducted follow-up visits to affected communities in 2016 and 2017. In a follow-up statement in April 2018, the UK NCP concluded that ENRC either had not taken appropriate steps to address the NCP's original recommendations or had done so only belatedly.

When a RAID and AFREWATCH team visited Kisankala in October-November 2018, they observed some improvements in benefits for local residents compared to the situation prior to the complaint, leaving the impression ENRC only took action to address problems of water supply, social provision and community engagement following adverse publicity.

The OECD Guidelines for Multinational Enterprises not only cover human rights and bribery (there are chapters on both, which is unusual within a single instrument), but also incorporate a mechanism for raising specific instances. Yet further consideration needs to be given to how non-compliance in one realm reinforces non-compliance in the other and how a NCP, faced with a complaint linking both issues, would deal with issues of criminality around allegations of bribery.

4. International financial institutions and investors

Q9. What role should international financial institutions, and investors play in exerting leverage to ensure both prevention of corruption but also business respect for human rights?

In this section, RAID draws upon research into the role of the IFC as a seed investor in the Congolese mining projects.

On the one hand, IFC plays a positive role by requiring its project partners to implement IFC standards in respect of, for example, the environment, social provision and resettlement.⁷³ Many provisions in such standards intersect with the human rights of those affected by a project. In addition, IFC also condemns corruption, which it links to exacerbating poverty. On the other hand, IFC's project due diligence falls short when it comes to assessing corruption risk. Of the utmost concern has been its failure either to sanction the perpetrators of high-level corruption or to pursue redress and compensation on behalf of community-level victims of corruption.

Further reading: [IFC's ill-judged investments in DR Congo's Mines](#)

⁷¹ The complaint was filed with ACIDH, a Congolese human rights NGO.

⁷² UK National Contact Point for the OECD Guidelines for Multinational Enterprises, *RAID & ENRC: Final Statement After Examination of Complaint*, February 2016, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/506285/BIS-16-156-raid-and-enrc-final-statement-after-complaint.pdf, p. 4.

⁷³ https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards.

A. IFC's absence from a US restitution claim

As a result of action in the US against Och-Ziff, while the parent company and its executives escaped criminal sanction, the hedge fund did admit to its role in bribery conspiracies and agreed to pay a fine totaling \$412 million.⁷⁴ A wholly-owned subsidiary, OZ Africa Management GP LLC (OZ Africa), also pleaded guilty to conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) and the case was assigned for sentencing.⁷⁵ Yet, at the beginning of 2020, sentencing still has not been concluded because, in August 2019, a US court recognised former shareholders of Africo as victims.

RAID contends that the International Finance Corporation, which was itself an investor in Africo, ought to have been part of the claim. As the private sector arm of the World Bank, IFC invests to promote growth to alleviate poverty. In Congo, a multitude of corrupt deals have left a legacy of exploitation, mismanagement, environmental harm and mass unemployment, all contrary to IFC's aims to revitalise the local economy and provide desperately needed social investment and environmental clean-up. The Congolese people needed the IFC to act on their behalf, since residents of the affected mining communities could not be directly involved as victims in the legal case (US law requires a crime victim to be directly and proximately harmed).

In November 2007, IFC invested \$4 million Canadian dollars into the Kalukundi project, which represented a 6% holding in Africo, with an option to buy more. As part of the corrupt take-over, new Africo shares were issued to Gertler, which heavily diluted the holdings of existing shareholders. In IFC's case, its holding in Africo decreased from around 6% to just over 2%. When IFC sold its shares in late 2009, it lost CAD \$2.7 million on its investment.

The fact that the judgement opens the way for restitution places an onus on IFC to explain why it did not participate to recover funds. According to RAID's research, it appears that IFC instead signed away its restitution rights, which would have arisen at the time of the FCPA action. The most likely beneficiary is a former Africo director, Chris Theodoropoulos, who bought back IFC's shares.

By not joining the shareholder action, IFC may surrender a potentially much higher restitution sum over and above its initial loss. Although a detailed expert valuation report commissioned by the former shareholders remains confidential, they state in a letter to the judge that Och-Ziff "should pay as much as \$600 million in restitution". While the amount of compensation has yet to be determined, based on this valuation, the amount IFC could have recovered on its holding and its option could equate to an estimated US\$50 million (minus any legal costs).

But there are other possible ramifications. The recent court decision recognizing the shareholders as victims in the OZ Africa case, if it results in a large restitution sum, potentially increases the maximum fine. Such deterrence is in line with the World Bank's zero-tolerance policy on corruption, yet IFC did not add its weight to the cause.

Should the court reject the existing plea agreement, and if restitution and other matters arising cannot be renegotiated, then OZ Africa's has the right to take back its guilty plea. Such action could mean the case might proceed to trial. At the time of writing, Sculptor (Och-Ziff's new name) had voluntarily agreed to extend the existing deferred prosecution agreement.⁷⁶

⁷⁴ *Deferred Prosecution Agreement*, op. cit. As Och-Ziff is publicly listed, the SEC, which regulates the New York stock exchange, also announced that Och-Ziff had agreed to settle civil charges of violating the FCPA. See U.S. Securities and Exchange Commission, 'Och-Ziff Hedge Fund Settles FCPA Charges Och-Ziff Executives Also Settle Charges', *Press Release*, 2016-203, 29 September 2016, <<https://www.sec.gov/news/pressrelease/2016-203.html>>.

⁷⁵ *Plea Agreement*, op. cit.

⁷⁶ <<https://sec.report/Document/0001193125-20-013164/>>.

By failing to add its weight to the victim claim, IFC has also missed a crucial opportunity to send a strong message to the perpetrators of corruption. Indeed, IFC has never publicly denounced the corruption that so negatively affected its investment, even though the 2016 FCPA action against Och-Ziff laid bare the Congolese corruption scheme. A year later, in 2017, Gertler was named a “corrupt actor” by the US Treasury and placed under sanctions. Yet Gertler and his companies have not been added by the World Bank Group to the list of companies blacklisted from doing business with the Bank (a process known as debarment). Instead, IFC officials stayed quiet and appeared to slowly back away from their investment.

B. Complaint to the World Bank Group Integrity Vice-Presidency

On 17 September 2019, RAID filed a complaint to the World Bank Group Integrity Vice-Presidency (INT). In this complaint RAID requests INT to investigate:⁷⁷

- **The role of Gertler and his companies in IFC’s Congolese mining projects** under the World Bank’s sanctions regime with a view to debarring them and remedying the harm to the victims of the corruption, including the Congolese communities near to the projects who were deprived of important benefits that those projects were to deliver;
- **IFC’s actions before and after investing in the Africo Project**, with a view to reporting publicly on lessons learned to better combat corruption in the future.
- **The adequacy of IFC’s due diligence prior to investing in the Africo project.** The World Bank and other consultants were already alarmed by the lack of transparency around joint venture mining contracts and the potential for corruption, while the dispute around Africo’s ownership had already begun when IFC invested.
- **IFC’s record during the period of its investment**, including whether it was effective in identifying and acting on ‘red flags’ associated with Gertler’s interventions, how it voted on Gertler’s takeover of Africo, and whether its divestment some 15 months after Gertler gained control was timely, transparent and appropriately managed.
- **Whether IFC has done all it can to support the victims of the corruption**, in particular its entitlement to join the shareholder action and the circumstances of any reassignment of restitution rights to another party.

IFC’s anti-corruption stance

IFC recognises that corruption damages policies and programs that aim to reduce poverty, so attacking corruption is critical to the achievement of IFC’s overarching mission to promote sustainable private sector investment in developing countries to improve people’s lives.⁷⁸

IFC prides itself as being at the forefront of development institutions in guarding against fraud and corruption in the projects it supports.⁷⁹ IFC has drawn up definitions and interpretations of sanctionable practices, including corruption, coercion and collusion in the context of IFC operations. The World Bank Group, including IFC as its private sector arm, seeks to prevent corrupt bidders by promoting openness around contracts and has also called for increased disclosure around beneficial ownership.⁸⁰

⁷⁷ <https://www.raid-uk.org/sites/default/files/complaint_to_int_-_ifc_congo_mining_projects_final_signed.pdf>.

⁷⁸ <https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/AC_Home/>.

⁷⁹ Ibid.

⁸⁰ *Update on World Bank Commitments following the UK Anti-Corruption Summit in May 2016*,

<<http://www.worldbank.org/en/topic/governance/brief/update-on-world-bank-group-commitments-following-the-uk-anti-corruption-summit-may-2016>>.

At the 2016 Anti-Corruption Summit, the World Bank's president committed to a range of steps to confront corruption.⁸¹ These steps included the enhancement of transparency to reduce corruption and the recovery of stolen assets.⁸² The World Bank, as joint partner in the Stolen Asset Recovery Initiative (StAR), was instrumental in helping to organise the Global Forum on Asset Recovery in December 2017, again emphasising that the deterrence of corruption must be accompanied by measures to provide redress.⁸³ At the October 2018 International Anti-Corruption Conference, the World Bank Group built upon its commitments, *inter alia*, stating: 'We will promote access to justice initiatives that ensure all are able to have their concerns of corruption heard and acted upon.'⁸⁴

The Bank has its own Sanctions System, under the Integrity Vice Presidency, to investigate allegations of fraud and corruption in World Bank-funded projects, including those investments financed by IFC.⁸⁵ The Sanctions System was operational at the time of IFC's investment in Africo.

When an IFC project partner, whether a firm or individual, either admits or is found to have engaged in corruption, the base-line sanction is debarment from World Bank Group projects (usually for three years), with conditional release.⁸⁶ However, there are three elements to the Bank's Sanctions System that, RAID advocates, increase the onus upon IFC to account for the decisions it made over its Africo investment, which has seen the victims of corruption abandoned:

- Firstly, the Bank encourages complaints, including from victims, which underlines a commitment to investigating alleged corruption.
- Secondly, the Bank publishes the results of investigations and lists those who are sanctioned. Hence there is a commitment to accountability and deterrence.
- Thirdly, the Sanctions System does make provision for restitution and other remedies 'where there is a quantifiable amount to be restored to the client country or project'.⁸⁷ IFC Sanctions Procedures state:⁸⁸

Restitution or Remedy. The sanctioned party is required to make restitution to a party or parties, or take actions to remedy the harm done by its misconduct.

This must raise the possibility of seeking restitution or remedy within IFC's sanctions regime. IFC is not explicitly identified as the only party for restitution and the provision refers to "parties", which, RAID would advocate, must include Congolese mining communities identified as beneficiaries of the projects before they were hijacked by corruption.

⁸¹ <<https://www.gov.uk/government/topical-events/anti-corruption-summit-london-2016>>.

⁸² *Update on World Bank Commitments following the UK Anti-Corruption Summit*, op. cit.

⁸³ <<https://star.worldbank.org/about-us/global-forum-asset-recovery-gfar>>.

⁸⁴ New Commitments undertaken by the World Bank at the High-Level Meeting of the 18th International Anti-Corruption Conference, Copenhagen, Denmark, October 2018, <<http://www.worldbank.org/en/topic/governance/brief/update-on-world-bank-group-commitments-following-the-uk-anti-corruption-summit-may-2016>>.

⁸⁵ <<http://www.worldbank.org/en/about/unit/integrity-vice-presidency>>. An overview of the World Bank Group process is available at: <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/ORGUNITS/EXTOFFEVASUS/0,,menuPK:3601066~pagePK:64168427~piPK:64168435~theSitePK:3601046,00.html>>. IFC has its own dedicated page on sanctionable practices, including combatting corruption:

<https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ac_home/sanctionable_practices>.

⁸⁶ World Bank Sanctioning Guidelines,

<<http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/WorldBankSanctioningGuidelines.pdf>> .

⁸⁷ *Ibid.*, ii. Range of Sanctions, F. Restitution and other Remedies.

⁸⁸ IFC Sanctions Procedures, 9.01(e), available at: <https://www.ifc.org/wps/wcm/connect/9e546b3f-0f5c-4ca2-81d1-e5d90a5bc337/Sanctions_Procedures+IFC.pdf?MOD=AJPERES&CVID=jHnQTxV>.

5. Recommendations, reform and policy alignment

Q2. *Given the areas discussed in the question [Q1] above, what are the ways States should address the issue of corruption which has a connection to business-related human rights abuses?*

Q7. *Are there areas where there should be greater policy alignment, in terms of seeking reforms, that will benefit both the business and human rights and anti-corruption agendas such as in areas including public procurement, whistleblower protection, beneficial ownership reform, conflict of interest legislation for public officials and legislators, etc.*

Drawing on RAID's research and analysis of the consequences for people when corruption and human rights abuse intersect, several broad areas of concern can be identified. These are set out below and are addressed to States, businesses, multi-stakeholder, and inter-governmental initiatives on reform to judicial, regulatory and policy frameworks. There is, of course, considerable scope to develop more detailed recommendations in each area. At this juncture, RAID provides further detail on access to redress for both victims of corruption and business-related human rights abuse (as advocated in the UN Guiding Principles on Business and Human Rights).

Pursuing prosecutions through anti-corruption and anti-bribery legislation. Overseas victims of corruption need to be identified, recognised and compensated for the harm caused. To do this requires definitions of harm that move beyond conventional economic harm (for example, losses to the State, losses to shareholders) but are informed by, for example, a consideration of community-wide harm to social provision, development opportunities and the environment. The detailed work that has been done in the human rights sphere on developing and providing content to each recognised right can help identify both victims and the harm caused.

In more detail, recommendations include:

- To ensure systematic identification of overseas victims in corruption proceedings and adopt legislation, if necessary, to:
 - entrench the right of diverse victims to participate in corruption proceedings, based on a comprehensive interpretation of harm. The consideration of such victims should start at the investigation stage, feed into charging decisions and ensure their participation in subsequent proceedings, sentencing or settlements.
 - require compensation to overseas victims in all relevant cases and establish mechanisms to ensure compensation is paid to the victims to mitigate risks of further corruption. Mechanisms for the return of compensation should be made transparent, accountable and fair.
- To establish easily accessible mechanisms for individuals and communities to report on the identification of overseas victims of corruption directly to law enforcement bodies and to allow civil society organisations to report and present evidence of harm on behalf of victims.
- To implement mechanisms for individuals and communities that have suffered from acts of corruption can get redress through direct legal action, per their duty under the United Nations Convention Against Corruption (UNCAC). Such mechanisms shall include a broad and comprehensive interpretation of harm to encompass social, environmental and cultural harm.

Multilateral investors. Investors should conduct systematic corruption risk assessments before investing in a project and institute thorough corruption prevention measures at the early stages of a project implementation. There is a clear need to implement measurable mitigation strategies for corruption-related risks and to ensure that victims of corruption are considered before, during, and after any investment projects. It is equally important that such investors establish mechanisms for

victims of corruption to seek redress. Such mechanism should be transparent, accountable and accessible to civil society organisations to represent victims on their behalf. Project-level grievance redress mechanisms should not serve as the primary anti-corruption mechanism for projects.

Targeted sanctions against oppressive regimes. Proper, timely and coordinated enforcement of sanctions is essential, provided they are targeted against the key members of oppressive regimes and the business actors and businesses that support them. However, there needs to be much greater transparency and accountability over their implementation and meaningful deterrents for those who breach sanctions.

Magnitsky-type sanctions. These types of sanctions are particularly important in any consideration of business, corruption and human rights. They can be used when country-specific sanctions would be inappropriate or harmful. By their very nature, they can be targeted at individual business actors, public officials and the companies they control, or which are used to transfer and hide corruptly acquired assets. Such sanctions, if properly constituted, can be a rare example of an instrument which encompasses the perpetrators of both corruption and human rights abuse and therefore have the potential to link both spheres when designating sanctions targets. However, it is crucial that there are no gaps when Magnitsky-type sanctions are used and that their use is coordinated across states. Currently, it is possible for individuals or businesses designated in one jurisdiction to move their operations and transact into another jurisdiction or currency to evade the sanctions.

Overhauling stock market regulation. Laxly regulated junior markets can facilitate bringing illicitly acquired assets to markets. The listing of such stocks, and, ultimately, the onward sale of companies to bigger players on main markets, amounts to asset laundering. There needs to be greater emphasis on identifying and checking the credentials of major shareholders and executives at admission to stop undesirable companies from listing. The provenance of assets, especially in the extractives sector and from fragile states, needs to be ascertained. Junior markets cannot, with any credibility, be “self-regulating” or policed by advisers who are commercial companies with vested interests in both bringing clients to market and ensuring they stay listed. Reliance upon the disclosure of material information cannot, on its own, be relied upon to sort the wheat from the chaff: by its very nature, such information relating to bribery, corruption and human rights abuse will never ordinarily be disclosed. Finally, there needs to be complete transparency when companies, executives and major shareholders break the rules. Disciplinary action must be swift, decisive (including use of powers to delist) and public. There also needs to be coordination between exchanges to prevent those behind corruption and human rights abuse from simply setting up shop elsewhere.

Transparency on beneficial ownership. A key reason the perpetrators of bribery and corruption, money-laundering, kleptocracy and human rights abuse can enrich themselves and act with impunity is because the ultimate beneficial owners of ill-gotten gains are concealed. Holding companies and individuals to account is frustrated by the deliberately complex, opaque and anonymised offshore structures through which shares are held. The UK has already set up publicly accessible registers of beneficial owners. Reform has also been timetabled for the UK’s offshore territories and crown dependencies.⁸⁹ The EU too will make beneficial owner registers publicly available by early 2020, although there are certain exceptions. It remains to be seen whether such measures will be circumvented, for example, by an increased use of jurisdictions where such ownership remains hidden.

Voluntary Principles on Security and Human Rights. RAID has voiced serious concerns over, and made recommendations in respect of, the Voluntary Principles. This notwithstanding, and focusing solely on the nexus between business and security providers, it is apparent that there is no consideration

⁸⁹ <<https://www.transparency.org.uk/corporate-secrecy-reform-overseas-territories-crown-dependencies-latest/>>.

whatsoever of the link between human rights violations and corruption under the Voluntary Principles, either at high-level or at the operational level.

Guiding Principles on Business and Human Rights. The Working Group should make clear that private grievance mechanisms are not appropriate for the consideration of human rights violations that are part of a pattern of excessive use of force. Such violations require independent oversight from a neutral body of sufficient expertise, with investigative, adjudicative and enforcement powers. Violations that encompass killings, sexual violence, torture and cruel, inhuman and degrading treatment are crimes. This is in accordance with principle 29, wherein a central tenet is to prevent problems from escalating into serious human rights violations (and not to deal with serious human rights violations themselves).

Likewise, impartial investigations into incidents are essential to ensure adequate redress for human rights violations, accountability for wrongdoers and better practices. The UNGPs are silent on this matter.

Private grievance mechanisms should complement, not replace state-based processes. Where state security forces are contracted to provide security on an ongoing basis, state actors lose their independence and local people are likely to lose faith in them. When the interests of state actors and the company become ever more closely aligned, recourse to justice or other state-based redress is undermined.

When a problem cannot be agreed and remedied through dialogue, in accordance with principle 31 of the UNGPs, a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine the outcome. Adjudication should be provided by a legitimate, independent third-party mechanism.