

**Asset laundering and AIM:
Congo, corporate misconduct and
the market value of human rights**



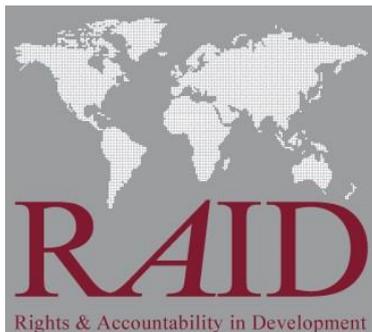
Rights & Accountability in Development

Asset laundering and AIM: Congo, corporate misconduct and the market value of human rights

Rights & Accountability in Development

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RAID promotes respect for human rights and responsible conduct by companies abroad and is a long-standing contributor to the debate on corporate conduct during and after the devastating war in DRC. Its publications on DRC include *Unanswered Questions: Companies, Conflict and the Democratic Republic of Congo* (2004); *Kilwa: A Denial of Justice* (2007); *Economic Aspects of Key Mining Contracts in Katanga* (2007); *Chinese Mining Companies in Katanga, Democratic Republic of the Congo* (2009). All available at <www.raid-uk.org>.



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Executive Summary

The Central African Mining and Exploration Company plc (CAMEC) was able to flourish on the London Stock Exchange's junior market despite its close links to Robert Mugabe's ZANU PF party (Zimbabwe), the dubious provenance of its Congolese mining assets and the unsavoury reputation of key business associates.

This report sets out the history of CAMEC's listing on the London Stock Exchange's Alternative Investment Market (AIM) in the context of the unresolved legacy of the wartime mining contracts awarded by the government of the Democratic Republic of the Congo (DRC). The DRC's lucrative minerals sector is beset by the continuing problem of corruption, which blights the well-being and future prospects of the Congolese population. The RAID report is the first systematic examination of the extent to which corporate conduct in zones of conflict is taken into account by stock market regulations, and of whether existing rules are adequately enforced. Inadequate due diligence, both before and after admission to AIM, is one of the major failings identified in the report.

Although CAMEC is no longer AIM-traded, the findings remain highly relevant in the context of ongoing controversies about mining contracts in the DRC, and the importance of London as a financial centre and stock market for such companies. CAMEC was acquired in 2009 by FTSE 100 Eurasian Natural Resource Corporation (ENRC) for £584 million – generating significant rewards for major shareholders – yet controversy persists. Global Witness has called upon ENRC to respond to concerns over corruption in the Congo, and the company has been in discussion with the Serious Fraud Office (SFO) in relation to problems with a Kazakh subsidiary.¹ A spokesman for ENRC denied that there is any formal SFO investigation into the company.²

AIM was established in 1995 by the London Stock Exchange (the Exchange) with the express purpose of giving smaller companies – from any country and any industry – the chance to raise capital on a market with 'a pragmatic and appropriate approach to regulation'. AIM is run by the London Stock Exchange, which in turn is recognised and regulated by the UK Financial Services Authority (FSA). Through its regulatory office (AIM Regulation), AIM monitors the admission regime and imposes continuing obligations on issuers and their nominated advisers. Companies joining AIM and those already listed must comply with rules set by the Exchange.

Much of the responsibility for the regulation of AIM companies is delegated to nominated advisers or nomads (mostly corporate finance firms, accountants or brokers). Nomads are approved by the Exchange to assess the suitability of applicants for AIM and to act as a mentor once a company has joined. Disciplinary action is rare in the extreme: only six companies and four nomads have been publicly censured, with two of these companies and three nomads also being fined between £75,000 and £600,000. To place this in context, AIM has been in existence for over 15 years, admitting over 3300 companies (over 1100 currently trading), advised by over 50 approved nomads and raising £78 billion in investment.

The report questions the effectiveness and good faith implementation of AIM's regulatory regime. In 2000, a company called Oryx Diamonds was prevented from joining AIM because the UK regulatory authorities warned of the 'utter unacceptability of a London listing for a company involved with the Zimbabwean military in the exploitation of diamonds in a conflict zone'. Yet just six years later, CAMEC, already trading on AIM at the time, was able to bring DRC copper

¹ This is in relation to an internal investigation into claims that money went missing from SSGPO, a division of ENRC in Kazakhstan. See Simon Bowers, 'SFO looks into Kazakh miner ENRC', *Guardian*, 11 December 2011. Available at: <<http://www.guardian.co.uk/business/2011/dec/11/sfo-looking-at-enrc>>.

² See Ben Harrington 'ENRC in talks with SFO over corruption allegations', *The Telegraph*, 11 December 2011. Available at: <<http://www.telegraph.co.uk/finance/newsbysector/industry/mining/8949716/ENRC-in-talks-with-SFO-over-corruption-allegations.html>>.

and cobalt assets of parallel provenance to the London market. CAMEC's assets were previously owned by companies belonging to the Mugabe ally Billy Rautenbach and arms dealer John Bredenkamp. The reputation of both should have resulted in heightened scrutiny of CAMEC's acquisition of DRC mining concessions. A series of United Nations and other reports had repeatedly raised grave concerns about how the struggle to control vast mineral wealth fuelled the war in the DRC, naming Rautenbach, Bredenkamp, and their associated companies in the exploitation. Both men and these companies were subsequently placed on European Union and United States sanctions lists. Rautenbach, wanted on criminal charges in South Africa at the time CAMEC purchased its DRC concessions from him, was later convicted of fraud. There is also growing international scrutiny of the dominant position in Congo's mining sector attained by Dan Gertler, a former CAMEC business partner and friend of Joseph Kabila, the DRC President.³ Allegations of asset stripping, underselling of Congolese mining assets, and other wrong-doing made by British MPs and the NGO Global Witness⁴ have been strenuously denied by the Congolese Government, ENRC and Mr Gertler.⁵

RAID's report concludes with recommendations for the British Government, which, like its predecessor, is a strong advocate of transparency and good governance. In February 2012, Andrew Mitchell, the International Development Secretary, reaffirmed the government's anti-corruption position: 'Corruption is a cancer in developing countries and the Coalition Government has a zero tolerance approach to it.'⁶

This report supplements a highly detailed complaint submitted by RAID in June 2011 to AIM Regulation (which was also copied to the FSA and SFO) entitled *Questions of compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce Limited*. Although it has acknowledged the substantial nature of RAID's submission, AIM has refused to enter into a dialogue about the issues raised. In December 2011, Seymour Pierce was publicly censured and fined, *inter alia*, for failing: (i) to exercise due skill and care in undertaking pre-admission due diligence; and (ii) to advise an AIM company properly about the need for timely and accurate notifications about its deteriorating financial situation. There is no reference to CAMEC in the disciplinary notice, which takes no account of other equally serious questions of compliance detailed in RAID's submission such as the disputed ownership of assets; the absence or incompleteness of accounts; and the conduct and reputation of key managers and business associates, all of which should have been thoroughly scrutinized. AIM refused to confirm whether it had investigated the issues arising out of RAID's submission, claiming that its 'duty of confidentiality' precluded the disclosure of information about any aspect of the process including any outcome, unless it resulted in public censure.⁷

In October 2009, Seymour Pierce was fined £154,000 by the FSA for failing to establish effective controls to guard against employee fraud.⁸ In July 2012, *The Telegraph* reported that Seymour

³ William Wallis and Katrina Manson, 'Questions over tycoon's Congo mines role', *Financial Times*, 26 June 2012. Available at: <<http://www.ft.com/intl/cms/s/0/dce3c89a-bec6-11e1-8ccd-00144feabdco.html#axzz1yv1LX7Gh>>.

⁴ Global Witness, *Memo to ENRC Shareholders*, 12 June 2012. Available at: <http://www.globalwitness.org/sites/default/files/Global%20Witness%20memo%20to%20ENRC%20shareholders%2012.6.12_1.pdf>

⁵ Helen Thomas 'Head of ENRC faces governance challenge', *Financial Times*, 12 June 2012, p. 19.

⁶ DFID Press Release 'Success in fighting against corruption as Ibori starts jail term', 17 April 2012. Available at: <<http://www.dfid.gov.uk/Documents/publications1/press-releases/Success%20in%20fighting%20against%20corruption%20as%20Ibori%20starts%20jail%20term.pdf>>

⁷ Letter from AIM Regulation to RAID, 24 April 2012.

⁸ Financial Services Authority, *Final Notice To Seymour Pierce Limited*, 8 October 2009, available at: <http://www.fsa.gov.uk/pubs/final/seymour_pierce.pdf>; also 'FSA fines Seymour Pierce £154,000 for

Pierce had been conditionally sold to a firm from either Ukraine or Kazakhstan, subject to FSA approval.⁹

The report is divided into three sections: the first summarises RAID's submission on CAMEC and deals with unanswered questions concerning compliance with AIM rules, which the Exchange must publicly answer and determine; the second is a critique of AIM rules, in terms of both their formulation (where they omit reference to forms of misconduct) and their implementation (where misconduct is captured by the rules, but where there is no public enforcement); and the third concludes with recommendations to the British Government on reform of the way in which AIM – and, by implication, other stock markets – are regulated.

The recommendations of the report are timely given the Financial Services Bill that is currently under consideration by the UK parliament to reform *inter alia* the Financial Services and Markets Act (FSMA). Under this Bill, the Financial Conduct Authority (FCA) will be responsible for protecting investors, regulating markets and supervising more than 25,000 brokers, investment managers and independent advisers. The way the Exchange has sought to water down tougher regulation proposed in the Financial Services Bill, even in relation to the Main Market, betrays a culture more interested in prioritising safeguards for companies and advisers than in bringing wrongdoers to account.¹⁰ This stance bodes even less well for AIM as the Exchange's deregulated junior market.

AIM, for the most part, does not fall directly under the FSMA; the Exchange draws up the rules for AIM and is responsible for the market's regulation. However, the Exchange, as a Recognised Investment Exchange (RIE) is itself regulated under the Act by the Financial Services Authority (to be replaced by the FCA). Unless the Exchange can demonstrate that it can reform the functioning of AIM and move away from a regulatory regime and culture where conflict-derived assets can be laundered with impunity, then the FCA must use new powers to regulate the regulator.

In 2007 a senior US regulator described AIM as 'a casino' and warned: 'It is a losing proposition to tout lower standards as a way to promote your markets.'¹¹ It is time for action if the integrity of the market is to be restored: loopholes in the current regulations should be closed, rules should be vigorously enforced and penalties significantly increased. Securities law and stock market regulations are designed to protect shareholder interests and an orderly market in shares; yet evidence from AIM suggests that even these rules are being flouted. The regulations do not address issues of wider public interest, particularly in relation to assets held in countries such as the DRC, which have an appalling human rights record and high levels of corruption.

failing to prevent employee fraud', *FSA/PN/136/2009*, 8 October 2009, available at: <<http://www.fsa.gov.uk/library/communication/pr/2009/136.shtml>>.

⁹ James Quinn, 'Seymour Pierce set to be sold to former Soviet company', *The Telegraph*, 1 July 2012, available at: <<http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9367251/Seymour-Pierce-set-to-be-sold-to-former-Soviet-company.html>>.

¹⁰ The London Stock Exchange successfully pushed for the dropping of proposals whereby the FCA's power to require a skilled person report – studies that look further into matters of concern – would be extended beyond regulated finance firms to include listed companies; it opposed the FCA's new power on the early disclosure of warning notices, arguing that such a move 'could cause significant market uncertainty, threaten market stability, and the reputation and viability of issuers and investment firms concerned'; and has sought to resist measures directed at the Exchange simplifying the way the FCA can give it directions, impose financial penalties and publicly censure it, and make the Exchange subject to skilled person reports. See London Stock Exchange Group, *Response to HM Treasury White Paper "A new approach to financial regulation: the blueprint for reform"*, 8 September 2011, available at: <<http://www.londonstockexchange.com/about-the-exchange/regulatory/lsegresponsetogovernmentwhitepaperseptember2011.pdf>>.

¹¹ Roel Campos, Securities and Exchange Commissioner, as reported in 'London v New York: top US regulator attacks AIM 'casino'', *The Times*, 9 March 2007.

As this report demonstrates, if human rights violations do not immediately impact upon market value and share price, then they are currently of little or no concern to the regulator. The UK Government, which champions transparency abroad, through the Extractive Industries Transparency Initiative, lags behind domestically. In the USA, the Securities and Exchange Commission (SEC) is set to issue new disclosure rules for oil, gas and mining companies, as required by Section 1504 of the Dodd-Frank Act.¹² Similar action is needed in the UK if the London Stock Exchange and AIM are not to provide havens for perpetrators of the worst corporate misconduct in some of the world's most conflict-prone regions.

The UN Guiding Principles on Business and Human Rights recognise the heightened risk of gross human rights violations in conflict-affected areas and call upon States to review whether their policies, regulations and enforcement measures effectively address this risk. This RAID report and its recommendations suggest how faith in the integrity of the UK's markets might be restored.

The sources for RAID's report and submission include a large number of official studies and reports, as well as legal and financial audits and analyses that have been carried out between 1998 and 2010 on behalf of the United Nations Security Council, the World Bank, the Government of DRC and the Congolese Parliament. Many of these have been published and others are in the public domain. The submission also draws, where appropriate, on court documents. The report and submission includes comprehensive references for the documents consulted in their preparation. Although they indicate the original source referred to, it should be noted that certain links to web-based material are no longer active either because the website has been taken down or because the information has been moved or removed.

The RAID report *Asset laundering and AIM: Congo, corporate misconduct and the market value of human rights* and its Executive Summary should be read in conjunction with RAID's submission to AIM Regulation, *Questions of compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce Limited*, and the underlying source documents.

To facilitate this, the submission and other key material is available at http://www.raid-uk.org/work/aim_2012.htm.

¹² The Dodd-Frank Wall Street Reform and Consumer Protection Act was approved in July 2010. Section 1504 of the Dodd-Frank Act adds to existing stock listing requirements in the US by obliging all extractive companies to publish the payments they make to the US and foreign governments in the countries where they operate. This information is to be disclosed in an annual document to the US Securities and Exchange Commission. The SEC is expected to vote on the rules in August 2012. See Publish What You Pay at: <http://www.publishwhatyoupay.org/about/stock-listings/cardin-lugar-amendment-dodd-frank-1504>.

Key Recommendations

RAID's detailed recommendations can be found at the conclusion of the full report, p. 43.

➤ The CAMEC case

RAID calls on:

- The London Stock Exchange to determine compliance or non-compliance with AIM rules in relation to the unanswered questions concerning the conduct of CAMEC and Seymour Pierce presented in RAID's submission of May 2011.
- The FSA to delay its approval of the sale of Seymour Pierce Limited until it has had time to fully consider whether any outstanding compliance issues relating to the company's role as CAMEC's nomad have been satisfactorily dealt with by the Exchange.
- The UK Treasury to make clear whether – and, if so, to what extent – any individual or entity on sanctions lists benefited from the sale to ENRC.

It would be a matter of concern had the UK sanctions regime been manipulated to suit the convenience of private commercial interests.

➤ The regulation of AIM

RAID calls on the London Stock Exchange to strengthen AIM rules by:

- Introducing requirements to strengthen ongoing due diligence.
There should be mandatory extensive due diligence for all substantial transactions involving assets in conflict-affected or weak governance zones: to include, for example, thorough checks on the validity of titles and licences, the reputation of key managers, business partners and associates and the rigour of accounting practices.
- Preventing the same firm from acting as both nomad and broker at admission, so that the gatekeeper function is ring-fenced from the drive to earn commission from a successful flotation.
- Making all breaches by nomads public and naming the adviser concerned.
- Drawing up rules and transparent procedures for handling complaints.

Commercial confidentiality should not be used as a pretext to restrict the regulator from disclosing information about investigations.

➤ Wider market regulation

RAID recommends that the Financial Services Bill should:

- Give powers to the FCA – as proposed in the draft – to impose financial penalties or to issue public censures through a warning notice in relation to contraventions of regulatory requirements by the Exchange.
- Include a provision requiring disclosure of payments from oil, gas and mining companies to British and foreign governments.

Such a provision would provide information to investors, help stem corruption, and encourage the accountable use of the revenues from the oil, gas and mining sector.

- Be amended to place a duty on the FCA, in its role as the UK listing authority, to require all energy (including mining, oil and gas) companies listed on the stock exchange to conduct human rights due diligence to identify, prevent and mitigate adverse impacts of their operations; companies should submit annual human rights impact reports to the Exchange which should also be publicly available.

The UN Guiding Principles recognise the heightened risk of gross human rights violations in conflict-affected areas and call upon States to help ensure that business enterprises are not involved in such abuses (Guiding Principle 7).