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## Och-Ziff, Mugabe's "Bagmen" and the underpricing of African assets

In a report published today, *Och-Ziff, Mugabe's "Bagmen" and the underpricing of African assets*, RAID – a British human rights organisation – calls on the US authorities to investigate a number of questionable transactions in Africa by Och-Ziff Capital Management Group LLC ('Och-Ziff'), a \$41 billion US hedge fund listed on the New York Stock Exchange.

The starting point of RAID's new report is an examination of responses that Och-Ziff has given about its investment in a UK mining company recently described as a front for the Mugabe regime. It updates RAID's July 2013 report, *Sanctions, violence, pensions and Zimbabwe*, but also analyses other transactions in the Democratic Republic of the Congo (DRC) and Guinea.

While RAID was preparing its report, Och-Ziff disclosed that it had been subpoenaed by the Securities and Exchange Commission and that an investigation under the Foreign Corrupt Practices Act concerns, *inter alia*, 'investments by some of our funds, both directly and indirectly, in a number of companies in Africa.'<sup>i</sup>

### ***Zimbabwean platinum***

In 2008, an Och-Ziff subsidiary privately purchased shares in the Central African Mining and Exploration Company plc (CAMEC) for £75 million (US\$150 million). Cash-strapped CAMEC used the proceeds to buy into a lucrative platinum mining venture with the Zimbabwean government. \$100 million of the Och-Ziff funds were then used to finance the Mugabe regime's campaign of violence that subverted the 2008 democratic elections. CAMEC was recently described in legal proceedings in the US as 'a company with clear ties to the Mugabe regime in Zimbabwe and an example of how Zimbabwe conducts business through its fronts and "bagmen"'.<sup>ii</sup>

RAID's new report analyses Och-Ziff's response to questions over the CAMEC transaction put to it – at RAID's request – by the California state pension fund (CalPERS), one of several public pension funds investing through the hedge fund.

Och-Ziff has told CalPERS it was 'a passive shareholder' in CAMEC with 'no control over the company, its operations or use of the proceeds'. Och-Ziff denied that the company or any of its employees knew that CAMEC intended to provide funds from the placement to the Mugabe regime. Yet Och-Ziff has not confirmed when it *completed* the purchase of CAMEC shares – was it before or after CAMEC's transaction to acquire the Zimbabwean platinum assets?

Moreover, is it credible that Och-Ziff would invest \$150 million without knowing more about CAMEC, its ownership and its plans?

Further information about Och-Ziff's role in the Zimbabwean deal has come to light in US legal proceedings.<sup>iii</sup> Court documents show that, in mid-2008, Och-Ziff was conversant with CAMEC's Zimbabwean operations, referring to 'Platinum (Zim)' and also to 'Meryweather (BR)', an apparent shorthand for Billy Rautenbach, later described by the US as a 'Mugabe crony' and who was wanted at the time by the South African authorities on fraud charges. Rautenbach had originally provided CAMEC with its mining assets in the DRC.

Och-Ziff could have divested from CAMEC after the platinum deal and loan was announced – Mugabe and senior Zimbabwean government figures were already designated under US sanctions and Rautenbach was quickly added to the list – but the hedge fund held onto its CAMEC shares.

RAID's current report analyses other controversial transactions involving the investment vehicle Africa Management Limited (AML) – jointly set up by Och-Ziff in 2008 – or Och-Ziff's partners in AML, South-Africa registered Mvelaphanda Holdings (Proprietary) Limited and UK-registered Palladino Holdings Limited.

### ***Congolese mines***

In 2008, Camrose Resources Limited bought mining assets in DRC and amended its company records to accommodate both AML and its Vipar Investments affiliate, which had loaned Camrose money to make the acquisition. Camrose is part of the group of companies controlled by the controversial businessman Dan Gertler, who has acquired mining concessions from the DRC government to sell them on at vast profit, although he denies that assets were obtained at 'knock-down values'. In 2013, Kofi Annan's influential Africa Progress Panel highlighted lost revenues associated with the opaque trading of mining concessions. The Panel focused on five Gertler deals, including those by Camrose, calculating that between 2010 and 2012, the DRC lost at least \$1.36 billion in revenues from under-pricing.

Camrose was itself later acquired by Eurasian Natural Resources Corporation (ENRC) plc, formerly one of the top 100 companies on the London stock market, which is now subject to a criminal investigation by the UK's Serious Fraud Office (SFO). ENRC had also bought CAMEC in 2009. ENRC's Camrose transaction and CAMEC acquisition have been identified, respectively, in relation to 'allegations of fraud, bribery and corruption' and 'possible breaches of financial sanctions'.<sup>iv</sup>

Given that Och-Ziff has made investments – either directly or through affiliates – in both Camrose and CAMEC, a key purpose of RAID's report is to ask questions of the hedge fund and the relevant authorities to clarify the exact nature of Och-Ziff's finance.

### ***Congolese oil***

In 2010 two unknown British Virgin Island companies, Foxwhelp Limited and Caprikat Limited, signed a contract for oil blocks with the DRC government. It later emerged that Gertler's Fleurette Group was behind the BVI companies, both of which shared business addresses with Mark Willcox, the then chief executive officer of AML UK. Willcox and his team advised the signatory for Caprikat, the nephew of South Africa's President Zuma. Given the Willcox connection, did the oil deal access Och-Ziff funds, either via Africa Management Limited or through any other vehicle? Did Och-Ziff know that Mark Willcox and a team from Mvelaphanda were giving 'strategic advice' to the signatory for Caprikat?

## Guinean mines

In 2012,<sup>a</sup> a secret mining deal between Och-Ziff's other AML partner, Palladino, and the Guinea government, was reported in the international press. One element was a \$25 million loan from Palladino to the government: in the event of a default, the debt would be converted into a highly lucrative 30% stake for Palladino in the operations of the national mining company. The breaking of the story in the press caused the Guinea government to pay off the debt, later admitting that it had not informed the IMF of the loan. The second element involved Palladino bringing private investors into joint mining ventures: 'a group of "cash-rich outfits" such as Och-Ziff and Mvelaphanda Holdings had already signed up to the arrangement.'<sup>v</sup> Not only was Palladino a partner in AML, but key Palladino executives were AML (UK) directors. Has Palladino ever had access to Och-Ziff funds for use in Guinea? Did Och-Ziff know about the Palladino 'secret deal' or loan? Did Och-Ziff provide funds – directly or indirectly – to invest in the proposed joint ventures?

'The US authorities – the Security Exchange Commission, the Department of Justice and the Treasury – should assess whether Och-Ziff's conduct is in accordance with market rules and the maintenance of market integrity, whether its activities engaged the FPCA and fell under US sanctions', said Tricia Feeney, Executive Director of RAID, adding: 'RAID is also calling on the SFO to determine whether there are grounds for an investigation into any UK registered entities identified in RAID's new report.'

As Kofi Annan remarked, 'When foreign investors make extensive use of offshore companies, shell companies and tax havens, they... undermine the efforts of reformers in Africa to promote transparency. Such practices also facilitate tax evasion and, in some countries, corruption, draining Africa of revenues that should be deployed against poverty and vulnerability.'<sup>vi</sup>

ENDS

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<sup>i</sup> Och Ziff Capital Management Group, United States Securities and Exchange Commission, *Form 10-Q*, Annual Report For the Fiscal Year Ended December 31, 2013, filed 18 March 2014, p.27, available at:

<<http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjI1NDE1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>>.

<sup>ii</sup> Letter from Miller Wrubel (Counsel to Funnekotter et al.) to Judge Ronald L. Ellis, United States District Court, Southern District of New York, 10 January 2014 and attached Subpoena and (Proposed) Order Compelling Production, Case 1:09-cv-08168-CM-RLE, Document 62.

<sup>iii</sup> Och-Ziff has been subpoenaed as a non-party in *Funnekotter et al. v. Republic of Zimbabwe*.

<sup>iv</sup> Respectively, SFO, Our cases, <<http://www.sfo.gov.uk/our-work/our-cases/case-progress/enrc-plc.aspx>> and; Letter dated 12 April 2013, from the legal firm Dechert to ENRC, cited in Juliette Garside, *The Guardian*, 'ENRC investigated for bribery in Africa and Kazakhstan', 28 April 2013, available at: <<http://www.theguardian.com/business/2013/apr/28/enrc-bribery-africa-kazakhstan>>.

<sup>v</sup> *Africa Confidential*, Vol. 53 No. 13, 22 June 2012, 'A new battle to control the mines'.

<sup>vi</sup> Foreword, 2013 African Progress Panel Report, p. 5, available at: <[http://africaprogresspanel.org/wp-content/uploads/2013/08/2013\\_REPORT\\_SUMMARY\\_Equity\\_in\\_Extractives\\_ENG\\_HR.pdf](http://africaprogresspanel.org/wp-content/uploads/2013/08/2013_REPORT_SUMMARY_Equity_in_Extractives_ENG_HR.pdf)>.