



Rights and Accountability in Development

Did money from a New York Hedge Fund and US Public Pension Investments help finance human rights violations in Zimbabwe?

July 2013

BACKGROUNDER

The funds that kept Mugabe in power

Just ahead of Zimbabwe's elections (scheduled for 31 July 2013), Rights and Accountability in Development (RAID), a British NGO, is calling for an investigation under US sanctions into past payments made by Och-Ziff Capital Management Group LLC ('Och-Ziff'), a New York hedge fund.¹

In 2008, ZANU-PF's Robert Mugabe retained the presidency of Zimbabwe after a campaign of horrific brutality against opposition supporters.² The US Ambassador to Zimbabwe in 2008, James McGee, condemned the 'systematic campaign of violence designed to block this vote for change... orchestrated at the highest levels of the ruling party.' The electoral violence led to an extension of US sanctions against Zimbabwe, which remain in force. RAID's investigations indicate that the violence was financed by money originating from OZ Management LP, an Och-Ziff subsidiary, which was channelled to the Mugabe government via a 'loan' as part of a lucrative platinum deal by a UK-traded mining company. The US\$100 million changed Zimbabwe's future by thwarting progress towards democracy.

The full briefing, 'Sanctions, pensions, violence and Zimbabwe' is available at <www.raid-uk.org>.

US Pension Funds, US Unions and investment in Zimbabwe

At the time of the Och-Ziff payment, some of the largest US public pension funds in California, New Jersey and Massachusetts were invested in Och-Ziff. Many public pension funds advocate the protection of human rights; a key concern is the extent to which such investment principles apply to external fund managers, such as Och-Ziff. Moreover, many public pension funds have strong union representation on their boards. US trade unions have been at the

¹ RAID promotes respect for human rights and responsible conduct by companies abroad and is a long-standing contributor to the debate on corporate conduct in central and southern Africa. Its publications are available at <www.raid-uk.org>.

² Human Rights Watch, "Bullets for Each of You" *State-Sponsored Violence since Zimbabwe's March 29 Elections*, June 2008.

forefront in campaigning for democratic change in Zimbabwe. The action by unions in South Africa and across the region – supported by their counterparts in the US – is credited with the initial blocking of Chinese arms, reportedly paid for by the loan, from reaching the Mugabe regime. The same US trade unions that campaigned against the ZANU-PF-led violence have many members with stakes in the very pension funds that dealt – and continue to deal – with Och-Ziff.

US Trade Unions, opposition to the Mugabe regime and investment in Zimbabwe

Trade unions have been at the forefront in campaigning for democratic change in Zimbabwe. In the run up to the 2008 elections and their aftermath, a number of prominent Zimbabwean unionists were beaten, tortured and falsely imprisoned. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the umbrella organisation comprising 57 unions, issued statements condemning the anti-democratic violence in Zimbabwe and the detention of senior Zimbabwe Congress of Trade Unions (ZCTU) officials, campaigning on behalf of unionists who had been targeted by ZANU-PF.³

The action by unions in South Africa and across the region is credited with the initial blocking of Chinese arms from reaching the Mugabe regime and with mobilising wider international condemnation of the shipment:⁴ the US joined the UK government in calling for UN Security Council consideration of an arms embargo.⁵ The American Federation of Teachers (AFT), describing the ‘travesty’ of the 2008 presidential elections in Zimbabwe, made specific reference to the arms shipment, resolving:⁶

that the AFT stand in solidarity with labor unions in South Africa, Mozambique, Angola and Namibia that have refused to deliver shipments of Chinese-manufactured arms to the government of Zimbabwe – weapons that can only inflame the political crisis.

The same US trade unions that campaigned against the ZANU-PF-led violence (which – unbeknown to them at the time – had been financed by money originating with Och-Ziff) had many members with stakes in the US public sector pension funds that dealt with Och-Ziff. The links between the unions and the major public pension funds are often strong; in the case of California, six out of thirteen trustees are elected by beneficiaries and typically come from public-employee unions.⁷ The question therefore arises as to the view of the unions on the investment of members’ funds, to whatever extent, with Och-Ziff, given the latter’s role in financing the CAMEC transaction, including the loan to the Mugabe regime.

³ Statement by AFL-CIO President John Sweeney on the Beatings and Mass Arrests of Trade Union Members in Zimbabwe, 18 September 2006; also Statement of AFL-CIO President John Sweeney on the Recent Arrest of Zimbabwe Congress of Trade Unions (ZCTU) President Lovemore Matombo and Secretary General Wellington Chibebe, 13 May 2008.

⁴ For an analysis of the outcome, see Samuel J. Spiegel and Philippe Le Billion, ‘China’s weapons trade: from ships of shame to the ethics of global resistance,’ *International Affairs*, 85: 2 (2009), pp. 323–346.

⁵ See United States Africa Command, Transcript: U.S. Department of State Press Roundtable in Pretoria, South Africa, 24 April 2008. See also, for example, *Los Angeles Times*, ‘U.S. urges Zimbabwe embargo,’ 25 April 2008.

⁶ American Federation of Teachers, Executive Council, ‘Zimbabwe: Political, Trade Union and Human Rights,’ Resolution, 2008.

⁷ See California Public Employees’ Retirement System (CalPERS), Board of Administration, <<http://www.calpers.ca.gov/index.jsp?bc=/about/board/home.xml>>.

The platinum deal that bank-rolled Mugabe

In April 2008, CAMEC acquired a majority holding in a Zimbabwean platinum joint venture, Todal Mining (Private) Limited. The Zimbabwe Mining Development Corporation (ZMDC), which is wholly owned by the Government of Zimbabwe, held the remaining 40%. As part of this transaction, CAMEC advanced a US\$100 million 'loan' to enable its newly acquired Zimbabwean subsidiary to 'comply with its contractual obligations to the Government of the Republic of Zimbabwe'. Bloomberg and other media outlets questioned whether the transaction was a thinly disguised donation to the Zimbabwe Government. The 'loan', which was also criticised by the Zimbabwean opposition, came at a crucial time for the ZANU-PF-led government, enabling it to subvert democratic elections: 'all the heartache, pain, gerrymandering, violence, intimidation, repression that took place at the 2008 election is directly linked to that 100 million'.⁸

New money from Och-Ziff and the nominee services of Morgan Stanley and Goldman Sachs

In July 2012 South Africa's *Mail & Guardian* reported that the \$100 million for the 'loan' from CAMEC to the Zimbabwean government originated with Och-Ziff, in return for 150 million CAMEC shares.⁹ A paper trail leads to OZ Management LP, the Och-Ziff subsidiary used to make the investment.¹⁰ On 29 July 2008, CAMEC issued a release noting 'OZ Management LP as Investment Manager to a number of investment funds is now interested in 5.83% of the outstanding share capital of the Company [CAMEC]. OZ Management is part of the Och-Ziff Operating Group and is wholly owned by Och-Ziff Capital Management Group.'¹¹ The fact that the shares are further held in the nominee accounts of two global investment groups – Goldman Sachs and Morgan Stanley – raises serious questions about the undisclosed identity of the ultimate beneficiaries of the holdings.

Did the Och-Ziff payment fall under US Sanctions?

US financial sanctions against Zimbabwe were first imposed in 2003, renewed in 2005 and further extended in July 2008.¹² Yet, despite, the existence of sanctions, there is evidence that finance originating from Och-Ziff went to the government of Zimbabwe and; that the government of Zimbabwe is synonymous with the Mugabe/ZANU-PF regime – comprising sanctions targets – who used the finance to undermine democracy, commit human rights abuses and retain power for their own benefit. Eight members of the regime's Joint Operations

⁸ MDC-T Treasurer General Roy Bennett, in a SW Radio Africa interview, presented by Alex Bell, broadcast 14 August 2012. See Transcript of Diaspora Diaries with Roy Bennett, posted 17 August 2012, available at: <<http://www.swradioafrica.com/2012/08/17/transcript-of-diaspora-diaries-with-roy-bennett/>>.

⁹ Stefaans Brümmer, Craig McKune and Owen Gagare, 'The investor who saved Mugabe', *Mail & Guardian*, 10 August 2012, <<http://mg.co.za/article/2012-08-10-00-the-investor-who-saved-mugabe>>.

¹⁰ CAMEC, 'Holding(s) in Company,' RNS 1627A, 29 July 2008, available at: <<http://www.investegate.co.uk/central-afr--min--38-exp--cfm-/rns/holding-s--in-company/200807291809131627A/>>.

¹¹ Och-Ziff Capital Management Group LLC owns 100% of Och-Ziff Corp, which in turn owns 100% of OZ Management LP (itself part of the Och-Ziff Operating Group).

¹² Executive Order 13391, in force prior to 25 July 2008, prohibited transactions with any 'person, entity or organization found to...be undermining democratic institutions and processes in Zimbabwe' and; Executive Order 13469, in force from that date onwards, prohibited transactions with, *inter alia*, any 'senior official of the Government of Zimbabwe' and those 'responsible for, or to have participated in, human rights abuses related to political repression in Zimbabwe.'

Command (JOC), in addition to Mugabe, were already designated sanctions targets at the time of the platinum deal.

Not only did sanctions targets benefit from the loan, but certain designated entities were parties to the Todal transaction. The US government has recognised that ‘Robert Mugabe and his senior official and regime cronies’ have used entities such as ZMDC ‘to illegally siphon revenue and foreign exchange from the Zimbabwean people’. On 25 July 2008 the US Treasury added ZMDC to the US Specially Designated Nationals (SDN) list ‘[i]n light of the continued intransigence of the brutal Mugabe regime’. OZ Management’s significant holding in CAMEC was formally notified on 28–29 July 2008, three to four days after ZMDC was designated.

CAMEC’s questionable track-record

Prior research by RAID has revealed how the UK-registered 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, the dubious provenance of its Congolese mining assets and the reputation of key business associates such as Billy Rautenbach and Dan Gertler. Rautenbach, who has been associated with CAMEC’s platinum acquisition, was described as a ‘Mugabe regime crony’ and placed on the US Sanctions list in November 2008. Eurasian Natural Resources Corporation plc (ENRC), the company that acquired CAMEC in 2009 and DRC mining assets sold on by Gertler, is currently under investigation by the UK’s Serious Fraud Office.¹³ Moreover, a leaked letter from a law firm appointed to investigate ENRC’s deals indicates that the acquisition of CAMEC ‘involved possible breaches of [EU] financial sanctions’. RAID first raised concerns over compliance with sanctions in respect of CAMEC in July 2011. On 3 July 2013, RAID again wrote to the UK Treasury’s Asset Freezing Unit calling for a full investigation into CAMEC’s loan to the Zimbabwean Government.

Recommended action in the US

US sanctions against Zimbabwe have been in force since 2003 and US companies such as Och-Ziff were already, and remain, prohibited from doing business with designated entities. The RAID briefing raises questions about the due diligence exercised by Och-Ziff/OZ Management and about the effectiveness of the corporate governance standards of leading US Pension Funds, such as CalPERS. RAID is calling on:

- the US Treasury (OFAC) to investigate the Och-Ziff payment under US Sanctions
- Och-Ziff to explain the extent of its due diligence and the timing of its investment. Did it know that the money would be used to finance a ‘loan’ to the Mugabe/ZANU-PF-led government?
- US pension funds to confirm, account for and review their past and present investments through Och-Ziff.

¹³ Caroline Binham and Christopher Thompson ‘SFO demands law firm’s ENRC documents,’ *Financial Times*, 17 April 2013.