



17 September 2019

Pascale H el ene Dubois
Vice President
Integrity Vice Presidency
1818 H Street
NW Washington,
DC 20433
USA

Complaint concerning the corrupt acquisition of IFC's Congolese mining projects

Dear Madame Dubois,

I am writing to you as Executive Director of RAID to submit a complaint concerning corruption relating to International Finance Corporation-backed mining projects in the Democratic Republic of Congo (DRC) from 2007 onwards. I copied your office on previous correspondence with IFC's General Counsel on 3 April 2019 and on 16 May 2019. I understand from IFC's 31 May 2019 response to us, that IFC may already have passed on our concerns to your office.

RAID is a UK based non-governmental organization that documents corporate human rights abuses in Africa and works with victims to hold companies to account. We have published extensively on abuses in the mining sector in Congo, including two mining projects in which IFC invested. These are Africo Resources Ltd's ("Africo") Kalukundi mining project ("the Africo Project", [IFC project number 26209](#)) and First Quantum Minerals Ltd's Kingamyambo Musonoi Tailings SARL ("the Kolwezi Project", [IFC project number 24920](#)). We wish to bring these projects to your attention, insofar as the same overarching corruption scheme encompassed both.

In September 2016, US authorities publicly identified the Africo Project and the Kolwezi Project as ventures targeted in a wider corruption scheme and took legal [action](#) under the Foreign Corrupt Practices Act (FCPA). One of the principals in the "DRC corruption scheme" detailed by the US authorities was readily identifiable as Israeli businessman, Dan Gertler. The US government sanctioned Gertler and his companies in late 2017 under the Global Magnitsky Human Rights Accountability Act, describing him as "an international businessman and billionaire who has amassed his fortune through hundreds of millions of dollars' worth of opaque and corrupt mining and oil deals in Democratic Republic of Congo (DRC)."

Despite the legal action under the FCPA, the imposition of sanctions by the US authorities, and the negative impact of the corruption on IFC's projects, Gertler and his companies have not been debarred by the World Bank group. We believe this requires your urgent attention. RAID is submitting this complaint to request the Integrity Vice Presidency (INT) to:

- 1. Investigate 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 intended to deliver;

2. **Examine 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.** Based on your office's mandate, we believe this should include reviewing internal practices and mainstreaming lessons learned in the reporting, detection and prevention of corruption.

We attach to this complaint a detailed public report, *IFC's ill-judged investments in DR Congo's Mines*, that sets out our concerns about IFC's Congolese mining investments. This report forms part of our complaint to INT. There is a focus in the report on the Africo Project, which covers: (i) IFC's due diligence prior to investing; (ii) the period during which Gertler gained control of Africo while IFC remained invested; and (iii) how IFC exited the investment. In addition there is a detailed section on First Quantum's Kolwezi Project.

Of particular concern to us is IFC's actions on combatting and denouncing corruption. In this case, it appears that IFC did little to stand up for thousands of Congolese residents who live near to the mining project and were robbed of the much needed employment, social and health benefits that the Africo Project was due to deliver.

Set out below are the key issues we are raising with your office.

i. Application of the investigation criteria under the Bank's sanctions regime

Based on our understanding of your assessment criteria for investigating complaints, we believe that:

- corruption, of the kind detailed by the US authorities in the Africo Project and the Kolwezi Project, is one of five sanctionable practices recognised by the World Bank Group, including IFC (and the corrupt take-overs had fraudulent, coercive and collusive elements);
- the complaint has credibility, particularly given the detail provided in the FCPA action, and is supplemented by other information including submissions made by former Africo shareholders seeking restitution as victims in the US courts, background material from IFC's project documentation, corporate documents, and World Bank and consultants' reports;
- the matter is of sufficient gravity to warrant an investigation. The magnitude of the "DRC corruption scheme" is of widespread public concern. The US Department of Justice estimates the co-conspirators paid more than one-hundred million U.S. dollars in bribes to Congolese officials, including to the then Congolese president, Joseph Kabila. Gertler and his companies have since been sanctioned by the US government. The company that bought mining concessions acquired by the co-conspirators under the scheme is under investigation by the United Kingdom's Serious Fraud Office. Further, the IFC's efforts to show leadership in combatting corruption make it especially important that the role played by Gertler and his companies in IFC-backed projects is investigated and any findings acted upon.

ii. Facts about the Congolese mining projects and the corruption scheme

In November 2007, IFC invested Can\$4 million into the Africo Project, which represented a 6% holding, and held an option to buy further shares. The Africo Project was a copper and cobalt mine near Kolwezi, in Lualaba province in southern Congo, majority owned by Africo Resources, a Canadian mining company. At the time, IFC was a key seed investor and it was one of IFC's first investments aimed at encouraging economic growth and poverty alleviation in Congo following many years of conflict.

As described by US authorities, a company controlled by Gertler corruptly acquired the Africo Project after engineering an ownership dispute, commencing in early 2007, in the Congolese courts. The ownership dispute commenced before IFC invested in Africo, but IFC in its July 2007 Summary of Proposed Investment, rather than flagging the risk, offered reassurance: "Recent legal challenges to ARL's [Africo's] rights in the project confirms the need for the company to team up with developmental finance institutions with a long term commitment in the DRC, to provide some political risk mitigation on the development of the project."

By paying bribes to Congolese judges and politicians, the co-conspirators, which included the US hedge fund Och-Ziff as a backer, threatened Africo's title to the mine. They only resolved the ownership claim when Africo shareholders agreed in June 2008 to sell to Gertler's Camrose Resources Limited ("Camrose") on the hugely favourable terms he demanded. Gertler's Can\$100 million placement diluted the shares of Africo's existing shareholders. IFC's share went from 6% to 2%. IFC continued to hold the shares till September 2009 when it sold its shares to an Africo director, though there is no indication that it sold its rights to restitution for the loss on its initial investment at that time. That loss would have been about \$2.7 million (although, as detailed in the full report, a much higher amount in restitution potentially arises from this loss).

As well as its investment in Africo, IFC had also invested \$4.5 million into First Quantum's Kolwezi Project, which was also targeted under the corruption scheme. The US court papers describe how the co-conspirators corruptly acquired the asset in 2009. Congolese government officials stripped the mine from its owners before it was immediately obtained by Gertler, who continued to make corrupt payments throughout the acquisition. Both Kolwezi and Kalukundi, alongside other corruptly acquired assets, were consolidated in Gerlter's Camrose, before being sold on to the London-listed Kazakh mining company, Eurasian Natural Resources Corporation Plc ('ENRC') in two tranches in 2010 and 2012. ENRC ultimately paid a total of US\$725 million for Camrose and its holdings in Congolese mines, which had originally been purchased by Gertler entities for US\$162 million, netting Gertler's offshore companies a return of almost 450 per cent. In 2013, the UK's Serious Fraud Office launched a [criminal investigation](#) into ENRC, which is ongoing.

In September 2016, the US Department of Justice (DOJ) and the Securities and Exchange Commission announced \$412 million of civil and criminal charges against Och-Ziff Capital Management Group LLC for its role in the corruption. Och-Ziff ultimately entered into a Deferred Prosecution Agreement with the DOJ, while an Och-Ziff subsidiary pleaded guilty to conspiracy to violate the anti-bribery provisions of the FCPA and the case was assigned for sentencing.*

In February 2018, the Africo former shareholders wrote to the judge claiming they "were harmed by the defendant's outrageous criminal conduct" and were entitled to restitution under the Mandatory Victims Restitution Act. Surprisingly, IFC did not participate in this action

* USA v. OZ Africa Management GP LLC, case number 1:2016cr00515, New York Eastern District Court, filed 27 September 2016.

alongside the other former shareholders. On 28 August 2019, the judge ruled that the former shareholders were victims, thereby offering them an opportunity to recover lost funds.[†]

In December 2017, Gertler was placed under US sanctions after being **identified** as a corrupt actor. The US Treasury said he had used “his close friendship with DRC President Joseph Kabila to act as a middleman for mining asset sales in the DRC, requiring some multinational companies to go through Gertler to do business with the Congolese state.” 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.

iii. IFC’s communication with RAID

In April 2019, RAID wrote to the IFC seeking clarity on what actions IFC had taken to denounce the corruption in the Africo Project and why IFC had not joined other shareholders to seek victim status to attempt to recover lost funds.

IFC did not respond to many of our questions, but did say in its 1 May 2019 response to RAID that action by INT was limited to misconduct “committed by parties contractually bound to the IFC”. IFC said that allegations of misconduct relating to the Africo Project “are attributable to third parties with no such relationship to IFC and to whom WBG sanctions’ system would not apply.” When RAID questioned this conclusion based on our understanding of the IFC Sanctions Procedures, IFC suggested in a second response on 2 May 2019 that we contact INT for clarification and report any concerns about misconduct to your office.

The Sanctions Procedures provide that “*IFC Counterparty* means, with respect to IFC Projects that are investment operations, a borrower, investee company or sponsor....” It is our understanding, based on that provision, that Africo was an IFC Counterparty as an investee company and that Gertler/Camrose controlled that counterparty at least from June 2008 onwards, when existing shareholders were forced to accept Camrose’s/Gertler’s controlling interest in Africo. In September 2009, IFC sold its shares. Gertler/Camrose could also constitute “any other entity or individual alleged to have engaged with that IFC Counterparty in a Sanctionable Practice in connection with such IFC Project” [IFC Sanctions Procedures, “Respondent”]. RAID also understands that affiliates of any Respondent can also be sanctioned, the former being defined as “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by IFC.”

iv. INT’s remit and the issue of limitation

RAID’s understanding is that INT has the remit to conduct both external and internal investigations. In respect of RAID’s submission, the scope of such investigations could cover, respectively, (a) the conduct of counterparties, those who ‘have engaged with’ counterparties, and affiliates in the corrupt takeover of the Congolese mining projects, and (b) IFC’s own conduct.

RAID’s understanding of INT’s internal and external investigations, including how any time limit on the investigation of Sanctionable Practices relates to the latter, is covered in a short annex to this letter. For the reasons set out in this annex, RAID believes that limitation should not prevent IFC’s ultimate consideration of Gertler’s debarment.

[†] Ibid., Memorandum & Order, Nicholas G. Garaufis, United States District Judge, 28 August 2019.

v. IFC failure to recover lost funds and lessons learned

We believe, in the interests of accountability and to further learning within the World Bank Group and beyond, it is important for INT to examine IFC's investment in the Africo and Kolwezi Projects, the manner in which they failed due to corruption, the impact on local Congolese communities and IFC's decision not to act to recover its losses from the Africo Project in the US courts.

Indeed, in reviewing whether sanctions procedures are appropriate, IFC refers to "the likelihood of recovery on IFC's loan or investment" as a consideration [IFC Sanctions Procedures, 4.01(a)].

Furthermore, RAID understands that the range of possible sanctions [9.01] includes

(e) 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.

RAID has identified a number of specific areas which we believe are pertinent to INT's investigation:

- **The adequacy of IFC's due diligence prior to investing in the Kalukundi project.** Understanding how investment decisions are made when there is a high governance risk will help to avoid future repetition and aid the World Bank Group in its fight against corruption.
- **IFC's record during the period of its investment, including:**
 - whether IFC was effective in gathering information about Gertler's ongoing interventions in Congolese mining transactions and identifying and acting upon "red flags" associated with corruption;
 - how IFC voted on proposals by Gertler's Camrose to take control of Africo, and whether IFC's strategy to exit the investment some fifteen 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 the thousands of Congolese residents in nearby communities whom the project was meant to benefit.

IFC recognises that corruption damages policies and programs that aim to reduce poverty. At the October 2018 International Anti-Corruption Conference in Copenhagen, Denmark, the World Bank Group built upon its commitments to combat corruption [stating](#): "We will promote access to justice initiatives that ensure all are able to have their concerns of corruption heard and acted upon."

However, in respect of the Africo Project, significant questions remain. For example, the IFC has not explained either in correspondence with RAID or elsewhere:

- how, to whom and on what terms it disposed of its shares in Africo?

- Why it has not joined, or retained the right to join, the legal action by former Africo shareholders to seek restitution in the sentencing of the Och-Ziff subsidiary that pleaded guilty under the FCPA?
- Why, given that the Sanctions Procedures expressly provide for remedying harm to parties, has the IFC not initiated its own investigation into the corruption that deprived the Congolese communities its investments were expressly designed to benefit?

IFC's participation in legal actions such as that commenced by the former Africo shareholders would send a strong signal that members of the World Bank Group will pursue restitution in order to return funds to the fight against poverty. It could also further enhance deterrence by increasing fines imposed on the perpetrators of corruption. Albeit in a different forum, IFC was [party to an action](#) to seek compensation for its investment in First Quantum's KMT project, eventually [settled out of court](#) and returning funds to IFC, making it all the more perplexing that IFC did not act in the Africo case.

In its 1 May 2019 response to RAID, IFC said it "had no entitlement to join the Africo shareholder action" because "the shareholder claims and related law enforcement actions occurred several years after IFC sold its shares and transferred its legal rights in the Company [Africo] to a third party." The "third party" IFC refers to as recipient is, according to RAID's research, most likely a former Africo company director.

If and when compensation is awarded in the Africo shareholders' claim, IFC will need to explain why it has given away rights. Based on common practice, when shares are sold in the market, as was done with the IFC's Africo shares, the "right to restitution" does not automatically accrue to the new owner. Indeed, any restitution rights in this case could only have arisen when OZ Africa pleaded guilty on 29 September 2016. Such a conclusion is at odds with IFC referring to a transfer when it sold its shares several years previously, which RAID has tracked to September 2009. It is therefore pertinent for INT to investigate the circumstances and terms on which any such assignment occurred and whose interests this served.

* * *

Corruption of this magnitude, which has thwarted IFC projects and the benefits they were intended to provide, surely falls within the remit of INT. When others have acted to sanction and hold to account the individuals and entities involved in corruption linked to an IFC backed project, it is of paramount importance that the Bank is seen to do the same.

Investigating what occurred in the Africo Project, debarring Gertler and his companies from involvement in any World Bank Group projects in the future, and taking steps to ensure lessons are learned is crucial for the World Bank's engagement in Congo and elsewhere. This is especially important given that another Bretton Woods institution, the IMF, is currently seeking to re-engage in Congo. As such, we urge your office to act in this matter.

If you require any further clarifications or have questions, please do not hesitate to contact me at RAID on woudena@raid-uk.org or to our office address in London.

I look forward to hearing from you once you have had time to consider our submission.

Yours sincerely,

A handwritten signature in black ink, reading "A. Van Woudenberg". The signature is fluid and cursive, with a large initial 'A' and a long, sweeping underline.

Anneke Van Woudenberg
Executive Director

Cc: Sérgio Pimenta, Vice President, Middle East and Africa, International Finance Corporation
Ethiopia Tafara, Vice President and General Counsel, Legal, Compliance Risk and
Sustainability, International Finance Corporation

Enc: Annex 1 – Nature of INT investigations and limitation
Annex 2 – Report: IFC's ill-judged investments in DR Congo's Mines