

DEMOCRATIC REPUBLIC OF CONGO

CONGO'S VICTIMS OF CORRUPTION



« **There is nothing here.
There is only suffering.** »

A victim of corruption in Congo

ABOUT

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.

African Resources Watch (**AFREWATCH**), is a Congolese non-governmental organization based in Lubumbashi, Democratic Republic of Congo, advocating for fair and equitable exploitation of natural resources, holding States and companies responsible.

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EXECUTIVE SUMMARY



« THE VOICES OF CONGOLESE VICTIMS, LIKE SO MANY OTHER VICTIMS OF CORRUPTION, ARE LARGELY IGNORED. »

On 16 September 2009, the Kingamyambo Musonoi Tailings (KMT) mine in Kolwezi in Democratic Republic of Congo suddenly closed, against the company's will. A company official told the confused workers the Congolese government had unlawfully stripped First Quantum Minerals, a Canadian company which owned the copper and cobalt mine, of its mining licence. The 700 Congolese workers no longer had jobs.

One of the workers, Jean returned home, uncertain about his future. A few days later, his 14-year-old son, Benoit*, fell ill. Jean took his son to the health clinic that treated KMT workers and their families, a benefit he received from his employment at the mine. But because the mine had closed, the doctor refused to treat Benoit unless his father could pay the medical fees upfront. Not having received his last paycheque, and with no severance pay, Jean lacked the funds. He had no option but to leave carrying his sick son. On their way home, Benoit died.

Action against the corruption that led to the mining licence being stripped and the mine's closure has been taken in the United States; however, to date, the detrimental impact on Congolese-victims of the corruption, like Jean and his family, have not been considered in any investigation or legal action.

Their voices, like so many other victims of corruption, are largely ignored.¹

This report aims to demonstrate the reasons why Jean, and others in the affected communities, should be considered overseas victims of corruption. As a step towards this, the focus of this report is on the identification and recognition of such victims and the harm caused to them.

Any legal proceedings against entities or persons involved in corruption should recognise victims, like Jean, and include them in any compensation that might arise.

For victims of overseas corruption to be recognised and compensated, the view that "corruption is a victimless crime" needs to be set aside. This has begun to happen, not least in the UK which positioned itself at the vanguard of fighting corruption when it hosted an international Anti-Corruption Summit attended by world leaders in May 2016.

The UK pledged not only to expose, pursue and punish those involved in corruption, but also to compensate the overseas victims of corruption and return stolen assets.

* Pseudonyms are used throughout the report to maintain confidentiality and privacy.

¹ RAID and AFREWATCH recognise that, if and when such legal proceedings arise, additional research may be required to further set out causality and to quantify the harm caused.

« PROSECUTING
AUTHORITIES
SHOULD ENSURE ALL
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WHEN IT COMES
TO PRESENTING
THE HARM CAUSED
BY CORRUPTION
AND SEEKING
APPROPRIATE
COMPENSATION. »

Following the summit, the UK government adopted, in June 2018, the General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases (the [«Compensation Principles»](#)). The principles were progressive in establishing that UK law enforcement agencies shall identify overseas victims in all relevant cases and consider compensating them by using whatever legal mechanisms available. At the time of this report's publication, the Compensation Principles had been in place for just over a year, although government officials involved in fighting corruption have said their agencies have been applying similar principles, though unofficially for a few years.

Applying the Compensation Principles in a meaningful way for the victims of corruption is the challenge UK law enforcement agencies tackling corruption now face. As this report sets out, the Compensation Principles provide an opening for the wider recognition of victims so that prosecuting authorities can ensure all voices are heard when it comes to presenting the harm caused by corruption and seeking appropriate compensation.

The Serious Fraud Office (SFO), the preeminent UK agency charged with tackling overseas corruption, should actively work to implement the Compensation Principles. Specifically, this report contends that one of the SFO's longest-running corruption investigations, that of the Kazakh multinational mining company, Eurasian Natural Resources Corporation ([ENRC Ltd previously ENRC Plc](#)), a UK-registered company listed on the London Stock Exchange until 2013, 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. The SFO [investigation](#) into ENRC is "focused on allegations of fraud, bribery and corruption around the acquisition of substantial mineral assets".

According to [press reports in 2016](#), the investigation is focused on three deals in the Congo, including in relation to cash withdrawals allegedly connected with ENRC's purchase of the Kolwezi mine project in 2010. In correspondence with RAID, Eurasian Resources Group (ERG), the company which bought ENRC in 2013, denied there were any cash payments made during the purchase of the mine in 2010.

ENRC also denies wrongdoing including any responsibility for closure of the mine, [stating in response](#) to legal proceedings brought by First Quantum “The licence was withdrawn by the DRC Government in August 2009, and the [DRC] Court of Appeal confirmed that the withdrawal was lawful... Any dispute that First Quantum has is with the relevant DRC authorities”. First Quantum launched [legal action](#) disputing that the stripping was lawful and began proceedings against the Congolese government at the International Chamber of Commerce’s International Court of Arbitration in Paris. The arbitration was eventually settled in Congo in January 2012 when ENRC agreed to pay \$1.25 billion [to settle](#) the dispute with First Quantum over the KMT mine and other Congolese mining assets. ENRC informed RAID it acquired all of First Quantum’s assets in Congo as part of the settlement. ENRC has brought claims against the SFO accusing it of misfeasance in public office in the course of its investigation. This report draws no conclusions on any of these allegations.

RAID and AFREWATCH have extensive experience reporting on corruption and human rights abuses in Congo. In the last 10 years, RAID has conducted more than eleven field research visits to local communities affected by mining operations in the Kolwezi area and has worked with AFREWATCH since its inception in 2014.

This report is based on three detailed field missions of several

weeks each conducted by RAID and AFREWATCH’s researchers between October 2018 and October 2019 in communities on or around the KMT mine. During this field research, RAID and AFREWATCH conducted interviews with 306 people, including 175 former KMT workers, 98 local residents, 9 Congolese lawyers and 6 medical staff. The vast majority of the interviews were conducted individually. Researchers also interviewed local and provincial authorities, traditional chiefs, academic experts, Congolese civil society groups and mining experts. RAID engaged in detailed correspondence with Eurasian Resources Group (ERG, which since 2013 has owned ENRC after it acquired the company through a de-listing) over its ongoing management of the Kolwezi mining project and met with company officials in Congo and in the Netherlands. In June 2018, RAID co-convened a roundtable with SFO officials and other experts to explore avenues for compensating victims for the harm of overseas corruption.

Based on the detailed field research, as well as forensic analysis of more than 2,000 pages of relevant documents linked to the mining contract, RAID and AFREWATCH have found that the lives of an estimated 32,000 Congolese residents living in twelve communities on or around the KMT mine, as well as 700 Congolese workers at the KMT mine, were dramatically and negatively altered as a direct result of the corrupt stripping of First Quantum’s mining licence, as part of the “DRC Corruption Scheme” (see below).

This report argues that the Compensation Principles should apply to the residents of these communities and former workers. It lays out the opportunity of applying the Compensation Principles to help rectify these harms and to include Congolese victims in possible future UK legal proceedings, thereby setting an example for how overseas victims of corruption could be identified, recognised and compensated.

This executive summary should be read in conjunction with the full report which provides complete citations.

« WE HAVE NO OTHER SOURCE OF WATER THAN THE RIVER, SO EVEN IF IT LOOKS POLLUTED, WE HAVE TO USE THAT WATER. »

THE “DRC CORRUPTION SCHEME”



« ONE OF THE MINING ASSETS IDENTIFIED AS PART OF THE CORRUPT SCHEME WAS THE KMT MINE IN KOLWEZI. »

Information about the corruption that occurred in relation to mining deals in Congo first appeared in the United States. In September 2016, the US Department of Justice (DOJ) announced it had concluded a [Deferred Prosecution Agreement](#) with a large American hedge fund, Och-Ziff Capital Management Group LLC (“Och-Ziff”, now called [Sculptor Capital Management Inc.](#)) who admitted to violating the Foreign Corrupt Practices Act (FCPA) in its dealings relating to Congolese mining assets. Och-Ziff paid \$412 million in combined [civil](#) and [criminal](#) penalties. Och-Ziff’s subsidiary, OZ Africa Management GP LLC, [pleaded guilty](#) to criminal charges.

Although the DOJ used pseudonyms in the documents it released when it announced the settlement, it is [possible to identify](#) the individual co-conspirators who operated alongside Och-Ziff in the corruption scheme. These included Dan Gertler, a notorious Israeli businessman, former Congolese President Joseph Kabila and one of his senior advisors, Katumba Mwanke, among others. Och-Ziff’s deferred prosecution agreement acknowledged having provided funds to Gertler, knowing that some of the funds would be used to bribe Congolese officials, in order for Gertler to acquire, consolidate and sell mining assets.

« SOMETIMES,
PEOPLE DIE ON THE
WAY TO THE CLINIC.
YOU CAN START
WALKING TOWARDS
THE CLINIC AND THE
PERSON DIES, SO
THEN YOU HAVE TO
GO BACK WITH THE
BODY.»

One of the mining assets identified as part of the corrupt scheme was the KMT mine in Kolwezi. Following the acquisition by Gertler, the KMT mine, alongside other mining assets, was sold to then UK-listed company, ENRC.

The KMT mine, a rich copper and cobalt tailings site was considered one of the crown jewels of Congo's mining assets. It was acquired by Gertler in 2010 following the [revocation of the mining licence](#) by the Congolese government from the previous owner First Quantum Minerals Ltd. It was subsequently awarded to [Gertler's entity](#) for a fraction of its value and sold on to ENRC for a substantial profit. The DOJ documents describe how Gertler continued to make corrupt payments to President Kabila's advisor Mwanke, throughout his acquisition of the KMT mine.

In this report, when RAID refers to corruption in Congo to include the way in which the KMT mine was acquired, this corresponds to the "DRC Corruption Scheme" as set out by the DOJ in its [Statement of Facts](#). Gertler has denied any wrongdoing and has not been charged by the US authorities, but in December 2017 he was placed under US [Global Magnitsky sanctions](#) alongside entities affiliated to him, after being identified by the US Treasury as a "corrupt actor" who used "his close friendship with DRC President Joseph Kabila to act as a middleman for mining asset sales in the DRC". In June 2018, the US Treasury [expanded the sanctions](#) to an additional 14 Gertler-related entities.

ENRC AND THE UK SERIOUS FRAUD OFFICE

The [DOJ documents](#) refer to a "publicly traded mining company", known to be ENRC, and report how, in August 2010, it "agreed to pay up to \$575 million over two years, including \$50 million in cash" to acquire 50.5% of a company owned by Gertler, which held the mining rights of the KMT mine. ENRC is not identified as a co-conspirator in the DOJ documents. The DOJ stated that Och-Ziff employees were informed that the \$50 million was for Gertler "to 'use on the ground' to corruptly acquire" the KMT mine.

In April 2013, the UK's SFO, which has jurisdiction over UK-registered companies, launched a [criminal investigation](#) into ENRC for alleged corruption. According to a leaked September 2016 letter from the SFO to Congolese judicial authorities, whose contents surfaced in [press reports](#), as well as a [judgement](#) from a Swiss tribunal, the SFO investigation into ENRC is primarily focused on allegations of fraud, bribery and corruption in Congo, including the KMT mine. At the time of publication, no charges have been filed, and the investigation remains ongoing. ENRC [denies any wrongdoing](#).



« FOLLOWING THE ACQUISITION BY GERTLER, THE KMT MINE, ALONGSIDE OTHER MINING ASSETS, WAS SOLD TO THEN UK-LISTED COMPANY, ENRC.»

« IT THEN CHANGED ITS NAME TO METALKOL RTR. »



THE CONGOLESE VICTIMS OF CORRUPTION



« MY YOUNGEST CHILD SUFFERS FROM CHRONIC COUGH. I CAN'T SEND HER TO THE CLINIC BECAUSE IT IS TOO EXPENSIVE. IT WOULD NEVER HAVE HAPPENED WHILE EMPLOYED AT THE KMT MINE” »

Since the acquisition of the KMT Mine as part of the “DRC Corruption Scheme” is detailed in the DOJ statement of facts, this report sets out the harm caused by the scheme. When the KMT mining licence was stripped by the Congolese government and later awarded to Gertler’s entity, it led to an abrupt closure of the mine and its activities. Thousands of Congolese working at or living near the mine suffered and sustained substantial harm from that sudden closure. To date, these victims have not been recognised in any legal proceedings.

First Quantum’s mining project had held great promise for local residents. The International Finance Corporation (IFC), the private banking arm of the World Bank, was a key investor and required First Quantum to provide concrete social and environmental benefits for local communities and higher standards for local workers. [Documents from the time](#) show the company was required to deliver clean water and improved access to healthcare and education for some 32,000 residents. The project was also to contribute towards the clean-up of the toxic air and water pollution at a nearby river that severely impacted people’s daily lives.

Immediately following the cancellation of First Quantum's mining licence, all development projects ended and around 700 Congolese workers lost their jobs. IFC was forced out of the KMT mine project, and with its departure, social and environmental commitments, safeguards and monitoring ended.

Based on extensive field research, RAID and AFREWATCH have identified two distinct groups of Congolese victims who suffered direct harm as a result of the "DRC Corruption Scheme".

GROUP 1: 32,000 RESIDENTS OF LOCAL COMMUNITIES LIVING ON OR NEAR THE KMT MINE

The first group of victims are 32,000 local residents living in twelve communities on or near the KMT mining concession. For nine years between 2009 (when First Quantum was stripped of its KMT mining license) and 2018 (when ENRC/ERG re-started some community development projects), local residents living on or near the mine were deprived of all benefits the project had committed to delivering, some of which had already begun.

BENEFITS LOCAL COMMUNITIES WERE DUE TO RECEIVE FROM FIRST QUANTUM:

These included:

1

The **provision of clean drinking water** so local residents would not be forced to drink polluted river water, which First Quantum tests had shown was not fit for human or animal consumption.

2

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.

3

Programmes to facilitate **access to education and healthcare** by building schools and health clinics, as well as the direct provision of healthcare services through vaccination and malaria prevention campaigns.

4

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.

These benefits were halted overnight following KMT's closure. It left thousands of residents plagued with ongoing air and water pollution, sickness and a lack of educational opportunities, deprived of alternatives. At the time of this report's publication, of the benefits above, 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 impact of the deprivation on the health and livelihoods of local residents between 2009 and 2018 is significant. Access to clean drinking water, malaria prevention programmes and functioning health centres is often a matter of life and death for residents living near the KMT mine. One resident interviewed by RAID emphasised the lack of medical care and the distance required to reach a health clinic, which was due to be addressed by First Quantum as part of the project:

“IT IS BECOMING NORMAL TO SEE PEOPLE DIE HERE NOW. JUST THE OTHER DAY, MY NEIGHBOUR HAD A STOMACH ACHE. HIS FAMILY WAS TRYING TO GATHER ENOUGH MONEY TO GET HIM TO THE HOSPITAL, WHICH IS 12 KILOMETRES AWAY, [BUT] IN THE MORNING HIS BODY WAS ALREADY COLD. HE HAD DIED DURING THE NIGHT”.

Another resident lamented the lack of access to education, which was due to have been addressed by the First Quantum: “First Quantum didn't have time to build a school here and it has affected a whole generation [of] children...”.

GROUP 2: KMT WORKERS

The second group consists of an estimated 700 Congolese workers, with their dependents, employed by First Quantum or its sub-contractors, who suffered harm when they suddenly lost their jobs and their corresponding benefits following the sudden closure of the KMT mine. Overnight, these workers also lost valuable free healthcare for themselves and their immediate family and prospects for future employment. Many of the workers were on contracts linked to the construction phase of the mine, which still had several months to run before being completed. Documents from First Quantum confirmed it intended to keep many of the workers on into its operational phase.

Had First Quantum's mining permit not been cancelled, hundreds of these workers might reasonably have expected their employment and corresponding benefits to continue. 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. Based on interviews with 175 former workers, RAID and AFREWATCH found that almost none were re-hired by ERG.

HOW CONGOLESE VICTIMS WERE IDENTIFIED



Critical to identifying the Congolese victims of the “DRC Corruption Scheme” and the harm suffered in communities around the KMT mine is the document trail. The harm suffered by residents can be measured against [publicly available development plans and baseline surveys](#) (the Project Documents) produced by First Quantum in accordance with IFC standards. In order for First Quantum to secure IFC investment, the company was required to prepare and implement specific social and environmental measures for local communities. These were clearly articulated and assessable in the Project Documents, with further elaboration by surveys conducted by First Quantum as part of its baseline studies. The Project Documents not only identify the expected beneficiaries of the KMT project but also stipulate what benefits they were meant to receive. First Quantum was delivering these commitments, to an agreed timetable, when the KMT mine was suddenly forced to close. The documents provide a clear baseline by which to measure progress on social, environmental and health programmes for former workers and affected Congolese residents before and after the stripping of First Quantum’s KMT mining permit.

The new owners of the KMT mine, a private company in Luxembourg under the name of [Eurasian Resources](#)

[Group](#) (ERG) (which bought ENRC in 2013, taking the company into private ownership) only re-started the development projects for local residents in 2018. The allegations of corruption that followed the acquisition of the KMT mine put significant pressure on the company’s finances and is reported to have contributed to its de-listing from the London Stock Exchange.

For nine years, the KMT mine lay fallow, with no resumption of the social and environmental benefits that had been committed to local residents. When activities finally re-started, the company drilled a small number of boreholes for clean water for communities in 2017-2018 and completed the resettlement of 80 residents from a small village. No other development programmes committed by First Quantum were resumed and during the nine years of inactivity, local residents saw none of the social and environmental improvements that were meant to occur. ERG has pledged to align its policies with IFC Performance Standards, but this pledge amounts only to a good-faith promise. There is no IFC enforcement, monitoring, oversight or sanction if such standards are not met, in sharp contrast to the arrangements that had existed under First Quantum.



A few days after the KMT mine closed, my 14-year-old son felt ill. I brought him to the clinic that used to treat KMT workers and our families - a benefit we received from our employment at the mine. The doctor refused to treat him because the mine had closed. I couldn't pay for the treatment. On our way back, my son died.



A victim of corruption in Congo

BROADENING THE VIEW OF VICTIMS OF CORRUPTION

The conventional view of corruption is that it predominately causes financial and economic harm. Those recognised as victims are limited to businesses unable to win tenders, shareholders that lost out on their investments or public entities that overpaid for a contract. Where compensation is granted, it is often directed towards the host state where the corruption occurred. For example, out of the £603 million imposed on companies in overseas bribery and corruption cases by the SFO between 2015 and 2019, only £33 million was levied for compensation. The vast majority of this compensation was allocated to host States. Direct victims harmed by the corruption were not represented in any case.

There is a growing recognition that the prevailing narrow view of corruption does not acknowledge the full breadth of harms, especially at the local level, such as environmental damage, neglect of social provision or the sudden loss of employment. Navi Pillay, the former UN High Commissioner for Human Rights summed it up well when she said, "Corruption is an enormous obstacle to the realization of human rights – civil, political, economic, cultural, as well as the right to development".

Existing legislative tools in the UK can be drawn upon which recognise

different types of victims and harms. One example is a [Community Impact Statement](#), which acknowledges that a community, and not only individuals, can be impacted by a crime.

These statements are used throughout the justice system to [enable better-informed](#) decisions related to the crime by setting out the harm caused and the impact on the community. They can include "social, financial, physical, environment, economic or other specific impacts or concerns". Another example is the [guideline](#) published by the Sentencing Council for the judiciary on fraud, bribery and money laundering offences. This guideline requires courts to weigh the harm including environmental harm and serious detrimental effects on individuals, such as through substandard goods or services.

These existing legal tools could be readily applied to the type of harms suffered by local communities and former workers around the KMT mine in Congo.

UK authorities will also need to rethink who the real victims of corruption are and what social, environmental and economic harm has been caused to them for the Compensation Principles to be meaningful.

This necessitates looking beyond "the State" as the victim, especially in cases where senior government officials may have been involved in the corruption, as is alleged to be the case by the DOJ in the "DRC Corruption Scheme" detailed in this report.

Acknowledging the full harm of corruption will also introduce a human-focus and an understanding that the anti-corruption sphere does not operate in isolation but is very much linked to the protection of human rights. The harms caused by the "DRC Corruption Scheme" to those living on or near the KMT mine, as described in this report, are all simultaneously human rights violations.



NEXT STEPS

There is a growing realisation that it is unjustifiable for the UK government to financially benefit from fines levied against UK companies or individuals found guilty of corruption overseas, while not having suffered the damages of these acts, and with very little allocated to compensating the real victims. Should any party be convicted for corruption over the KMT mine case, this would be an opportunity to rectify this wrong and apply the Compensation Principles in the spirit and manner in which they were intended.

To meaningfully implement the Compensation Principles, the traditional perception of victims of corruption need to shift. It creates a contradiction in our judicial system where victims of corruption are treated, and viewed, differently than victims of other crimes, even more so if they are overseas victims. UK law enforcement officials should deepen their understanding of who the victims of corruption are and the harm they have suffered, and develop guidance on how to apply the principles, determine the harm caused, quantify the losses and find the best legal avenues for compensation. These tasks will undoubtedly add to the workload of often overstretched investigation teams working on complex cases. But not doing so will make the fight against corruption less effective, less meaningful and less fair.

RECOMMENDATIONS

TO THE SERIOUS FRAUD OFFICE:

1. In applying Principle 3 of the Compensation Principles (the General Principles to compensate overseas victims [including affected States] in bribery, corruption and economic crime cases):

- i. To systematically identify and include individual and community-wide victims of corruption in overseas corruption cases based on a wider definition 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.
- ii. To pursue all remedies, including seeking compensation orders for such victims, based on wider categories of harm to individuals and communities in cases resolved by prosecution (Principle 2a), as well as under the terms of Deferred Prosecutions Agreements (Principle 2b). Complexity should never be accepted as an obstacle that prevents victims from obtaining redress. The global nature of bribery and corruption, conducted through shell companies and intermediaries, often offshore, is deliberately complex.
- iii. To adopt an innovative approach in quantifying and apportioning compensation based on these wider categories of harm.

2. To strengthen Guidance on the implementation of the Compensation Principles in the SFO Handbook, as required under Principle 4, more particularly:

- i. To define overseas victims of corruption in a broad and inclusive manner. The Guidance should go beyond a consideration of the state and include communities and individuals;
- ii. To explicitly recognise environmental, social and cultural harm in the definition and comprehension of overseas victims to take into account the magnitude of the harm of corruption and help divert from the conception that compensation is tied to the size of the bribe or the corporate profit obtained by it;
- iii. To include civil society organizations, alongside the Department for International Development (DFID) and the Foreign and Commonwealth Office, in its early engagement, to help identify victims of corrupt

TO THE UNITED KINGDOM GOVERNMENT AND AUTHORITIES:

1. To remove the anomaly in the Sentencing Guideline on Fraud, Bribery and Money Laundering Offences to make corporate offenders accountable for the same broad harm that only applies to individual offenders. Currently, harm is represented, in bribery cases, by a financial sum normally calculated on the gross profit from the contract obtained, retained or sought by a corporate offender, whereas, for individual offenders, the harm can be assessed in a much broader fashion, to include adverse impacts on the environment and service provision. The Sentencing Council should instigate a review of this matter.

2. To ensure the SFO is adequately resourced to enable it to adequately carry out work relating to the recognition, identification and participation of victims in overseas cases.

3. To support and monitor the SFO's approach to fully integrate overseas victims into its cases, including implementation of the recommendations made in this report.

TO ALL GOVERNMENTS (INCLUDING THE UNITED KINGDOM):

1. To ensure systematic identification of overseas victims in corruption proceedings and adopt legislation, if necessary, to:

i. 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.

ii. 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.

2. To ensure co-operation with other jurisdictions and interested groups in the identification and compensation of overseas victims of corruption.

3. 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.

4. 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.

TO EURASIAN RESOURCES GROUP (ERG):

1. To ensure that previous commitments and development projects, as originally set out by the International Finance Corporation (IFC) at the KMT mine, are restarted, if applicable, and continued to the same or higher standards.

2. To ensure that all existing and future development programmes are aligned with the International Finance Corporation (IFC) standards or higher and ensure independent monitoring that includes representatives of local communities.

3. To independently evaluate the harms to local communities and former workers of leaving the mine fallow between its acquisition and the restarting of activities by ERG in 2017-2018 and to consider how these harms can be rectified and compensated.

4. To incorporate the harm caused by corruption as potential human rights violations in its Clean Cobalt Framework, as well as in ERG's Anti-Bribery and Anti-Corruption Policy, in order to mitigate corruption-related risks throughout its supply chain.

5. To report credible allegations or findings of bribery, tax evasion or money laundering in its supply chain to relevant authorities.

6. To ensure transparency in the company's acquisitions and dea-

lings of mining assets in the DRC, to publish information on cash and other payments made to government officials, Gécamines and any other Congolese entities and Dan Gertler;

7. To report any ongoing financial or other relationships with members of the Kabila family, as well as with Dan Gertler and associated entities, and to end any such relationships with him or associated entities.

8. To publish and make accessible for local communities, in an appropriate language, its:

i. Environmental and Social Impact Assessment (ESIA);

ii. Management Plans developed to mitigate and monitor environmental and social impacts;

iii. Stakeholder and ASM Engagement Plan;

iv. Water Sampling Plan, as well as any water quality and level (surface and groundwater) monitoring results;

v. Air Quality Monitoring Plan, as well as any air quality and dust level monitoring results;

vi. Any noise monitoring plans, as well as its associated results.

TO THE INTERNATIONAL FINANCE CORPORATION (IFC):

1. To conduct systematic corruption risk assessments before investing in a project and institute thorough corruption prevention measures at the early stages of a project implementation.

2. 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.

3. Establish mechanisms for victims of corruption to seek redress. Such mechanism should be made 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.

TO MULTILATERAL INSTITUTIONS:

THE UNITED NATIONS WORKING GROUP ON BUSINESS AND HUMAN RIGHTS:

1. To assess how the United Nations Guiding Principles on Business and Human rights (UNGPs) and its framework Protect-Respect-Remedy can be applied to victims of corruption.
2. To consider how to apply remedy as set out in the UNGPs to cover the human rights harm caused by corruption.

TO THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD):

1. **To ensure that the human rights harms caused by corruption are incorporated** in the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the Guidelines for Multinational Enterprises Guidance and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. To apply a comprehensive interpretation of victims of corruption to include individuals and communities, and to broaden their understanding of the harm caused by corruption to encompass environmental and social damages in both the Guidance and Guidelines.

2. **To bolster anti-corruption efforts and ensure that law enforcement and oversight bodies, such as the “Cour des Comptes” and the Commerce Tribunal, are sufficiently funded, staffed and fully independent to adequately investigate and prosecute individuals, state entities, corporations and officials involved in corruption and bribery.**

TO THE DEMOCRATIC REPUBLIC OF CONGO :

1. **To fully support efforts by foreign authorities to identify and compensate victims of corruption and to ensure judicial co-operation and assistance.**
2. **To bolster anti-corruption efforts and ensure that law enforcement and oversight bodies, such as the “Cour des Comptes”, are sufficiently funded, staffed and fully independent to adequately investigate and prosecute individuals, state entities, corporations and officials involved in corruption and bribery.**

3. **To instigate independent audits of state mining companies,** and to publish and implement recommendations of such audits.

4. **To ensure that allegations of corruption by Congolese officials or public entities are investigated** in an independent and transparent manner. If the investigation confirms the allegations, to launch criminal proceedings against the corrupt officials in an independent and impartial court of law and to ensure sufficient and dissuasive penalties are imposed. Information obtained through legal actions outside of the DRC should be used to ensure effective proceedings and convictions.

5. **To ensure systematic identification of victims of corruption and compensation** in all relevant cases undertaken by the Congolese authorities. To apply a comprehensive interpretation of victims of corruption to include individuals and communities, and to broaden their understanding of the harm caused by corruption to encompass environmental and social damages.

6. **To monitor adverse environmental and social impacts of mining activities** and implement strategies to mitigate such impacts, including sanctions and penalties.

METHODOLOGY

RAID and AFREWATCH have extensive experience reporting on corruption and human rights abuses in Congo. In the last 10 years, RAID has conducted more than eleven field research visits to local communities affected by mining operations in the Kolwezi area and has worked with AFREWATCH since its inception in 2014. Both organisations have published extensively on human rights issues linked to the exploitation of natural resources.

This report is based on three detailed field missions conducted by RAID and AFREWATCH researchers between October 2018 and October 2019 in communities living on or around the KMT mine. During this field research, RAID and AFREWATCH conducted interviews with 306 people, including 175 former KMT workers, 98 local residents, 9 Congolese lawyers and 6 medical staff. The vast majority of these interviews was conducted individually. Researchers also interviewed local and provincial authorities, traditional chiefs, academic experts, Congolese civil society groups and mining experts.

RAID and AFREWATCH researchers visited nine communities in and around the KMT mine, often multiple times. RAID and AFREWATCH documented the facilities and services provided to local residents, took photographs of

villages, water infrastructure, health clinics and schools. Researchers also obtained copies of documents received or produced by local residents relating to the KMT mine operations. All interviewees provided oral informed consent for the interviews. RAID and AFREWATCH have withheld the names of those we interviewed to protect them from possible reprisals. Interviewees were not compensated, but some who travelled to meet researchers were reimbursed for transport expenses.

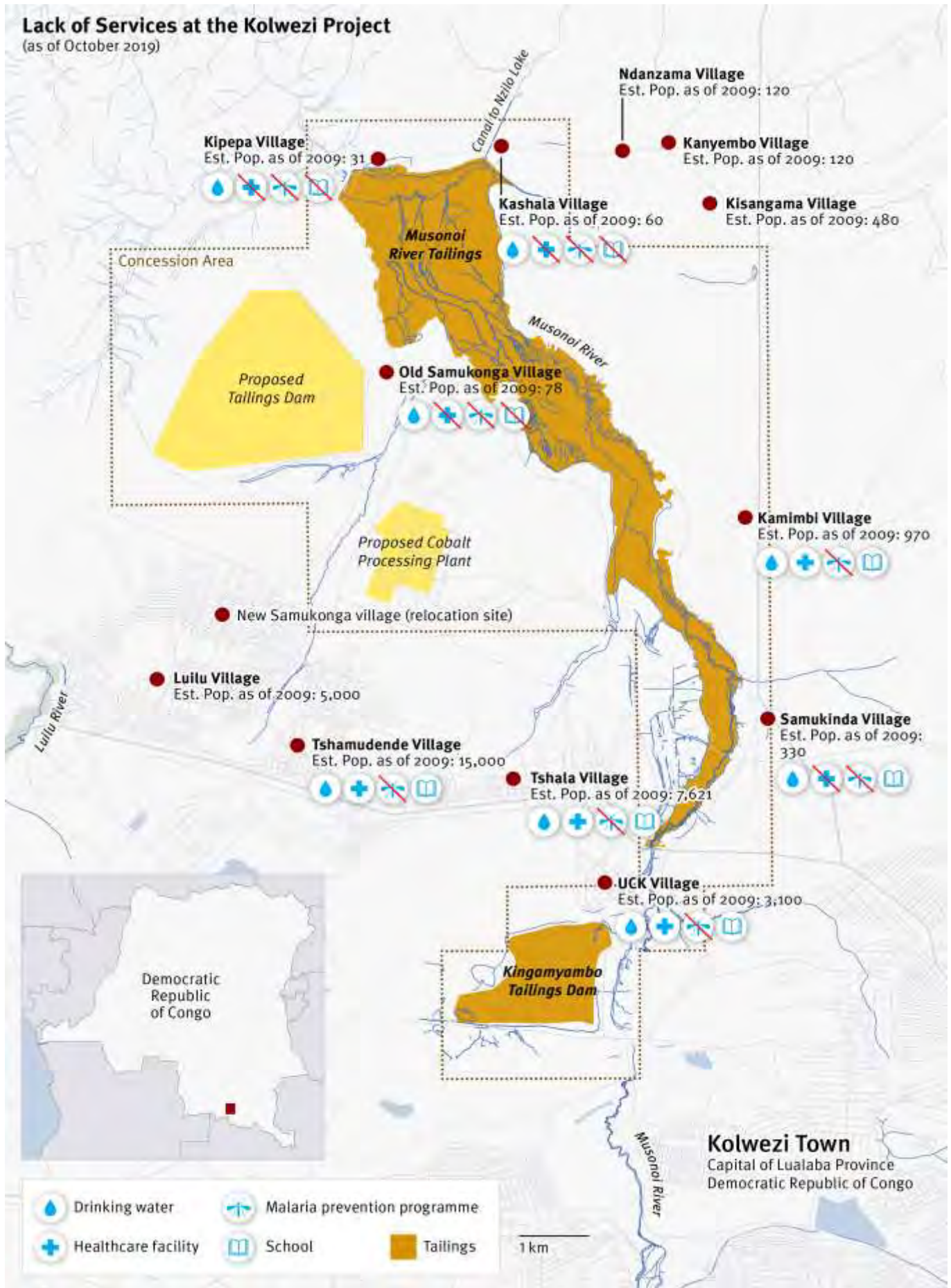
Additionally, RAID staff conducted extensive desk-based research with financial reports, statements, public documents, newspaper articles, legal documents and other relevant claims. In total RAID analysed more than 2,000 pages of relevant documents and legal filings linked to the KMT mining contract, including First Quantum's Environmental and Social Impact Assessment, Environment Support Programme Management, Resettlement Action Plan and Stakeholder Engagement Plan, as well as ERG's Supplier Code of Conduct, Human Rights Policy and Commitment and Sustainability Reports.

RAID engaged in detailed correspondence with Eurasian Resources Group (ERG, the purchaser of ENRC) and met with ERG officials in Congo in April 2019 and in the Netherlands in

May 2019, including with ERG's CEO, Benedikt Sobotka. RAID's correspondence with ERG is in Annex 1. RAID visited the KMT mine on 12 April 2019 and had an extensive visit of its facilities.

In June 2018, RAID co-convened a roundtable with SFO officials and other experts to explore avenues for compensating victims for the harm of overseas corruption. RAID has also held meetings, alongside other NGOs, with the SFO director, Lisa Osofsky, and presented the findings of our research detailed in this report to SFO officials in April 2019. RAID further consulted with experienced barristers and academic experts.

Map



Introduction

Corruption fuels inequalities and discontentment often contributing to fragility, violence and conflict. It impedes investment and has a negative effect on economic growth and jobs. According to the World Bank, the average income in countries with high levels of corruption is about a third of that of countries with low levels of corruption.² Corruption undermines and distorts public policy, democracy and the rule of law. It results in the diversion of public resources into the hands of private individuals who enrich themselves, often on the backs of the most impoverished.

Beyond reducing public revenues and weakening national governance, corruption also impacts individuals and communities. Victims of corruption are often narrowly perceived, for example, as the state where the corruption happens or business competitors, with harm viewed as a financial loss. This makes it difficult for communities and individuals who have suffered harm, including environmental degradation, the rollback of healthcare and schooling, access to jobs and land, to be recognised as victims. This should change.

Congo has long been marred by corruption. In 2018, Congo was ranked near the bottom of the Corruption Perceptions Index, at position 161 out of 180.³ The country has been particularly vulnerable to the schemes of unscrupulous individuals due to its immense mineral wealth, its weak government institutions and two consecutive wars between 1996 and 2002 which cost the lives of millions of its people.⁴ The scale of corruption in recent years has been staggering. Three individuals have been particularly prominent in various alleged corruption schemes and were named in numerous reports by the United Nations, civil society groups and, more recently, in legal proceedings in the United States (see “DRC Corruption Scheme” below). These included Congolese President Joseph Kabila (president from 2002-2018); a senior presidential advisor, Katumba Mwanke; and a notorious Israeli businessman, Dan Gertler.

This report argues that Congolese communities harmed by corruption should be considered as victims. It provides detailed information on just one example, that of the Kingamyambo Musonoi Tailings mine (KMT mine), one of the crown jewels of Congo’s rich copper and cobalt belt in the south of the country. Questionable business dealings concerning the KMT mine were admitted in the course of judicial proceedings in the United States (see below), while an ongoing Serious Fraud Office investigation in the UK has been reported to relate in part to the acquisition of the same mine. To date, the detrimental impact on Congolese residents has not been considered. The focus of this report is on the identification and recognition of such victims of corruption and the harm caused to them. It argues that any legal proceedings against entities or persons involved in the corruption should recognise these victims and include them in any compensation that might arise.

²World Bank, ‘Six Questions on the Cost of Corruption with World Bank Institute Global Governance Director Daniel Kaufmann’, 2016.

³ ‘Corruption Perceptions Index 2018 - Transparency International’ <<https://www.transparency.org/cpi2018>> accessed 5 January 2020.

⁴ The first war began in 1996 when the Rwandan, Ugandan and Burundian armies entered eastern Zaire (as it was named then) in support of a rebel group led by Laurent-Désiré Kabila. In 1997, as a result of the military advance, President Mobutu Sese Seko fled the country and Kabila took office. The second war began in 1998 when Kabila broke with his Rwandan and Ugandan allies. The renewal of hostilities drew in Angola, Namibia and Zimbabwe on the side of the Kinshasa government and Uganda, Rwanda and Burundi on the side of several rebel groups. In 2002 the main rebel groups agreed to a peace accord leading to foreign troop withdrawals. The war officially ended in 2003 with the signing of an All-Inclusive Agreement.

Context: The “DRC Corruption Scheme”

A. The US Department of Justice Case

On 29 September 2016, the US Department of Justice (DOJ) charged Och-Ziff Capital Management LLC (“Och-Ziff”, now called Sculptor Capital Management Inc.), one of the largest hedge funds in the world, with conspiracy to violate the Foreign Corrupt Practices Act (FCPA).⁵ Och-Ziff concluded a Deferred Prosecution Agreement in which it admitted to violating the FCPA in connection with a scheme involving the bribery of officials in Congo to acquire valuable mining assets (referred to by the DOJ as “the DRC Corruption Scheme”).⁶ Och-Ziff and its executives escaped criminal sanction but agreed to pay civil and criminal penalties of \$412 million combined.⁷ Och-Ziff’s subsidiary, OZ Africa Management GP LLC, pleaded guilty to criminal charges.⁸

Although the DOJ used pseudonyms, it is possible to identify the individual co-conspirators alleged by the DOJ to be involved alongside Och-Ziff, including Dan Gertler (since confirmed in later court documents), a notorious Israeli businessman, former Congolese President Joseph Kabila and one of his advisors, Katumba Mwanke, among others.⁹ The principal transactions in Congo referred to by the US authorities all followed a similar pattern: 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 often to bring pressure to bear on rival companies, forcing them to relinquish their assets. The DOJ has described the corrupt practices of Och-Ziff as “bribery in its purest form”.¹⁰

The DOJ’s filing shows how, over a 10-year period, Gertler, together with others, paid more than \$100 million in bribes to Congolese officials “to obtain special access to and preferential prices for opportunities in the government-controlled mining sector”.¹¹ Och-Ziff’s funds enabled Gertler to acquire, consolidate and sell mining assets, including the KMT mine, the focus of this report, “to a large publicly-traded mining company for a

⁵ United States Department of Justice, ‘Och-Ziff Capital Management Admits to Role in Africa Bribery Conspiracies and Agrees to Pay \$213 Million Criminal Fine’ (29 September 2016), ‘DOJ criminal fine against Och-Ziff’ <<https://www.justice.gov/opa/pr/och-ziff-capital-management-admits-role-africa-bribery-conspiracies-and-agrees-pay-213>> accessed 5 January 2020 (DOJ criminal fine against Och-Ziff).

⁶ *United States of America against Och-Ziff Capital Management Group LLC, Deferred Prosecution Agreement* [2016] United States District Court Eastern District of New York Cr. No. 16-516 (NGG) (DOJ Deferred Prosecution Agreement), available at <https://www.justice.gov/opa/file/899306/download>.

⁷ Och-Ziff was publicly listed and 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’ (29 September 2016) <<https://www.sec.gov/news/pressrelease/2016-203.html>> accessed 5 January 2020.

⁸ *United States of America against OZ Africa Management GP, LLC, Plea Agreement [‘PA’], Cr No 16-515 (NGG)* (United States District Court Eastern District of New York), (DOJ Plea Agreement), available at <https://www.justice.gov/criminal-fraud/file/900276/download>.

⁹ Rights and Accountability in Development (RAID), “‘Bribery in Its Purest Form’: Och-Ziff, Asset Laundering and the London Connection, Executive Summary” <http://www.raid-uk.org/sites/default/files/oz_bribery_in_its_purest_form_executive_summary_rev.pdf> accessed 5 January 2020. Gertler is

later named in a decision of the court relating to the sentencing of OZ Africa.

¹⁰ United States Department of Justice, ‘DOJ criminal fine against Och-Ziff’ (DOJ) (n 5).

¹¹ *DOJ Deferred Prosecution Agreement* (n 6) p. 20.

significant profit”.¹² This latter company is identifiable as then UK-listed Eurasian Natural Resources Corporation Plc (ENRC Plc). ENRC is not alleged in the DOJ filing to have been involved in the corrupt stripping of First Quantum Ltd's mining licence. The company has previously denied any wrongdoing, pointing out it carried out extensive due diligence before investing in the KMT mine.

In this report, when RAID refers to corruption in Congo, to include the way in which KMT was acquired, this corresponds to “the DRC Corruption Scheme” as set out by the DOJ in its Statement of Facts. Gertler has denied any wrongdoing and has not been charged by the US authorities, but in December 2017 he was placed under US sanctions, alongside entities affiliated to him. He was identified by the US authorities 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, requiring some multinational companies to go through Gertler to do business with the Congolese state”.¹³

B. **Dan Gertler’s** Acquisition of the KMT mine and Onward Sale

The review of mining licences that the Congolese government embarked upon in 2007 was meant to clear-up the murky legacy of wartime contracts but instead provided Gertler and his collaborators with a golden opportunity to obtain valuable assets at knockdown prices by exploiting the threat of expropriation or revocation of mining permits. First Quantum’s KMT project, also known as the Kolwezi Tailings, was one of the mines targeted and threatened to have its mining licence revoked by the Congolese government. The KMT mine was considered one of the crown jewels of Congo’s mining assets. The company resisted, and the project was cancelled by the Congolese government in August 2009.¹⁴

Four months after stripping the KMT licence from First Quantum, the Congolese government sold the venture to a group of British Virgin Island companies collectively referred as the Highwind Properties Limited Group, owned by Gertler’s Camrose Resources Limited. Highwind paid \$60 million for a controlling 70% share of the project, with state-owned mining companies holding the remaining stake.¹⁵ Just seven months later in August 2010, amidst a storm of media controversy, ENRC paid almost three times this amount –

¹² *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 and Notice of Hearing against Och-Ziff Capital Management Group LLC, OZ Management LP, Daniel S Och, Joel M Frank* [2016] Securities and Exchange Commission (SEC) Release No. 78989/Release No. 4540/File No. 3-17595, p.42, available at <https://www.sec.gov/litigation/admin/2016/34-78989.pdf>.

¹³ U.S. Department of the Treasury, ‘United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe’ <<https://home.treasury.gov/news/press-releases/sm0243>> accessed 5 January 2020.

¹⁴ First Quantum Minerals Ltd, ‘First Quantum Minerals Suspends Construction at Kolwezi Project’ (16 September 2009) <<https://www.first-quantum.com/Media-Centre/Press-Releases/Press-Release-Details/2009/First-Quantum-Minerals-Suspends-Construction-at-Kolwezi-Project/default.aspx>> accessed 5 January 2020; First Quantum Minerals Ltd, ‘First Quantum Minerals Announces Commencement of International Arbitration Regarding the Cancellation of The Kolwezi Project’ (1 February 2010) <https://s1.q4cdn.com/857957299/files/doc_news/NR-10-08-InternationalArbitration.pdf> accessed 5 January 2020; First Quantum Minerals Ltd, ‘First Quantum Minerals Provides RDC Legal Update’ (30 March 2010) <https://s1.q4cdn.com/857957299/files/doc_news/NR-10-15.pdf> accessed 5 January 2020.

¹⁵ The Highwind contract with Gécamines refers to a ‘signature bonus’ of \$60 million. See ‘Contrat d’association Entre La République Démocratique Du Congo, Le Groupe Gécamines et Le Groupe Highwind Properties Limited’ (30 January 2010) <https://www.mines-rdc.cd/resourcecontracts/contract/ocds-591adf-3114095943/view> accessed 5 January 2020. Gécamines and SIMCO, formed “La Compagnie de Traitement des Rejets de Kingamyambo (METALKOL)”, a joint venture with a group of British Virgin Island companies collectively referred as the Highwind Properties Limited Group.

\$175 million – for only 50.5% of Camrose.¹⁶ It ultimately bought the remaining 49.5% over two years later in December 2012.¹⁷ According to valuation experts, quoted by *Global Witness* in 2012, both sales were far below commercial valuations of the KMT mine.¹⁸ The Global Witness memo does not mention whether the valuations took into account the disputed ownership of the mine. The influential Africa Progress Panel, established to promote equitable and sustainable development for Africa, calculated as follows: “Taking into consideration other assets wrapped up in the Camrose purchase, ENRC effectively paid \$685.75 million for Kolwezi and associated concessions, which were originally purchased...for \$63.5 million – a return of just under 1,000 per cent for the offshore companies concerned”.¹⁹ Finally, in April 2016, the state-owned partners in the venture sold their remaining stake in the project to the company that had bought ENRC in a delisting in 2013, Eurasian Resources Group (ERG).²⁰ While ERG is sometimes described as ENRC's successor, ERG has pointed out that it is a different company with separate management.

The DOJ describes how Och-Ziff worked with Gertler “to obtain additional...assets known as Kolwezi Tailings” to attract a buyer for Camrose.²¹ According to the DOJ, throughout his acquisition of the KMT mine, Gertler continued to make corrupt payments to Mwanke, President Kabila’s advisor.²² From the details provided by the DOJ, these bribes amounted to \$3 million.²³

C. ENRC and the UK Serious Fraud Office

The DOJ documents referred to a “publicly traded mining company”,²⁴ known to be ENRC, and reported how, in August 2010, it “agreed to pay up to \$575 million over two years, including \$50 million in cash”²⁵ to acquire 50.5% of Camrose, which held the mining rights of the KMT mine. ENRC is not identified as a co-conspirator in the DOJ documents. The DOJ stated that Och-Ziff employees were informed that the \$50 million was for Gertler “to

¹⁶ Eurasian Natural Resources Corporation Plc, ‘Acquisition of Shares in Camrose Resources Limited and Certain Subsidiaries and Circular to ENRC Shareholders and Notice of General Meeting’ <<https://www.investegate.co.uk/article.aspx?id=201212101621371854T>> accessed 5 January 2020. ENRC paid \$50 million in cash and issued promissory notes totalling \$125 million, to mature between 9 months and 24 months later.

¹⁷ *ibid.*

¹⁸ Global Witness, ‘Global Witness’s Memo to ENRC’s Shareholders’ (23 October 2012) <<https://www.globalwitness.org/en/archive/global-witness-memo-enrcs-shareholders/>> accessed 5 January 2020. At page 5: “On the basis of a July 2010 Numis estimate, which stated that 65 per cent of Kolwezi was worth \$2.5 billion, one can extrapolate that a 70 per cent stake would have been worth \$2.69 billion. On the basis of two other valuations, which Global Witness obtained on condition of anonymity from financial institutions of international repute, 70 per cent of Kolwezi would be worth respectively \$334 million (December 2009) and \$1.58 billion (May 2010). While these valuations differ enormously, they are all much higher than the \$60 million signature bonus paid by the Highwind Group. The sum paid by ENRC for the 50.5 per cent of Camrose also appears very low if one looks at the May and July 2010 valuations of Kolwezi referred to directly above, which were both calculated shortly before ENRC’s announcement of its deal with Camrose. On the basis of the July 2010 valuation, the stake purchased by ENRC would have been worth no less than \$1.36 billion, while on the basis of the May 2010 valuation this stake would have been worth \$798 million”.

¹⁹ Africa Progress Panel, ‘Equity in Extractives: Stewarding Africa’s Natural Resources for All’ (2013) p. 58 <https://static1.squarespace.com/static/5728c7b18259b5e0087689a6/t/57ab29519de4bb90f53f9fff/1470835029000/2013_African+Progress+Panel+APR_Equity_in_Extractives_25062013_ENG_HR.pdf>.

²⁰ ‘Congo Urged to Release Contract on Metalkol Stake Sale’ *Reuters* (26 October 2016) <<https://www.reuters.com/article/congo-mining-idUSL8N1CV90S>> accessed 5 January 2020.

²¹ *Oz Africa Plea Agreement* (n 8) Statement of Facts para. 47.

²² *ibid* Statement of Facts para. 46.

²³ *ibid.* para. 46: ‘Throughout the period of DRC Partner’s acquisition of Kolwezi Tailings..., DRC Partner continued to make corrupt payments to DRC Official 2. For example, on or about December 23, 2009, DRC Partner delivered \$1 million to DRC Official 2; on or about January 5, 2010, DRC Partner delivered \$2 million to DRC Official 2.’

²⁴ *ibid* Statement of Facts para. 16.

²⁵ *ibid* Statement of Facts para. 47.

‘use on the ground’ to corruptly acquire the Kolwezi Tailings”.²⁶ ENRC is not identified as a co-conspirator and its current owner has told RAID that “ENRC made no cash payments during the purchase of the KMT mine in 2010”.

In April 2013, the UK’s Serious Fraud Office (SFO) launched a criminal investigation into ENRC Ltd (previously ENRC Plc) “focused on allegations of fraud, bribery and corruption around the acquisition of substantial mineral assets”.²⁷ The UK had jurisdiction as ENRC was a UK-registered company. According to a leaked September 2016 letter from the SFO to Congolese judicial authorities, whose contents surfaced in press reports, Gertler is part of the SFO investigation, which includes investigation of ENRC’s purchase of the KMT mine.²⁸ In an e-mailed response to the press article about the leaked letter, Gertler’s Fleurette Group said, “Mr. Gertler has always made it clear that his business dealings in the DRC are entirely proper and appropriate. That remains the case. Beyond that, he is not able to comment on allegedly leaked documents”. ENRC has repeatedly and vigorously denied any wrongdoing and taken legal action against the SFO over the propriety of its investigation.

More recently, a tribunal in Switzerland, in a November 2018 decision in respect of the SFO’s access to Swiss bank records, referred to how the SFO’s request relates to “a criminal case involving suspected corruption and fraud” and how the SFO “is investigating [a] London-based Kazakh firm”.²⁹ Although the entities and individuals in this decision are anonymised, a press report names many of those concerned. According to *Bloomberg*:

The SFO believes that ENRC paid Gertler hundreds of millions of dollars too much for mines in Congo, some of which was meant for bribing Congolese officials, the Swiss ruling shows. ENRC vastly overpaid for one copper company as part of a “fraud of the highest order,” the ruling said.

...

The ‘most important’ act of corruption relates to \$35 million paid in cash, which the SFO suspects was used as bribes, it [the ruling] said. The necessary bank records would allow the SFO to reveal potential kickbacks paid to officials engaged in acts of corruption, the Swiss court said.³⁰

In correspondence with RAID, Eurasian Resources Group (ERG), the company which bought ENRC in 2013, denied there were any cash payments made during the purchase of the mine in 2010.

²⁶ *ibid.*

²⁷ ‘ENRC Ltd’ (*Serious Fraud Office*) <<https://www.sfo.gov.uk/cases/enrc/>> accessed 5 January 2020.

²⁸ Tom Wilson, ‘SFO Probes Israeli Billionaire, Ex-ENRC Directors Over Congo’ (*Bloomberg Quint*) <<https://www.bloombergquint.com/markets/sfo-probes-israeli-billionaire-ex-enrc-directors-on-congo-deals>> accessed 6 January 2020; see also Juliette Garside, ‘ENRC Investigated for Bribery in Africa and Kazakhstan’ (*The Guardian*) <<https://www.theguardian.com/business/2013/apr/28/enrc-bribery-africa-kazakhstan>> accessed 6 January 2020.

²⁹ *A, B Limited, C, D Ltd, E Limited c Ministère public du canton de Genève* [7 novembre 2018] Tribunal pénal fédéral RR.2018.3+4+5+8+9 [3.2]: «La commission rogatoire s’inscrit dans le cadre d’une procédure pénale britannique portant sur des soupçons de corruption ainsi que d’escroquerie. L’autorité requérante enquête sur la société kazakh F. PLC, basée à Londres», available at <https://entscheide.weblaw.ch/cache.php?link=07.11.2018_RR.2018.3&q=&sel_lang=en>.

³⁰ Franz Wild and William Clowes, ‘ENRC Sues U.K. Fraud Cops as Corruption Charges Loom’ *Bloomberg* <<https://www.bloomberg.com/news/articles/2019-03-26/enrc-sues-u-k-fraud-cops-before-decision-on-corruption-charges>> accessed 6 January 2020. The article notes: “The names in the Swiss ruling were replaced with letters, but people familiar with the decision confirmed the references were to Gertler and Dezita”.

The “most important” act of corruption referred to in the judgment relates to the “acquisition of a mining asset” which “[t]he DRC government had effectively confiscated...from a Canadian company”. This description matches the stripping of the KMT mine (also known as the Kolwezi or KMT project) from First Quantum.³¹ The Africa Progress Panel also identified the KMT “strip and flip” as generating the highest return for a Gertler offshore company at the time.³²

In its reporting on the Swiss tribunal, *Bloomberg* notes:

ENRC was not a party to these proceedings in Switzerland, a spokesman said, adding that the SFO withdrew a similar request for assistance to Swiss authorities relating to another affiliate of the company.... ENRC denied ‘all allegations of criminality against it’.

The press report also includes a statement that Gertler’s Fleurette Group “disputes all allegations and will vigorously defend its reputation” and that “the company has at all times acted with integrity, honesty and transparency in the Congo. Nothing has ever been proven in a court of law to suggest otherwise”.

At the time of publication of this report, neither ENRC Ltd, nor its employees have been charged by the SFO; the investigation remains ongoing. ENRC continues to deny wrongdoing³³ and has launched several legal challenges against the SFO over its investigation.³⁴ The challenges include a claim for the legal costs incurred by ENRC and an accusation of misfeasance in public office in the course of the SFO investigation. On 14 June 2019, the SFO charged Anna Machkevitch – the daughter of Alexander Machkevitch, one of the owners of ENRC – in relation to its investigation into ENRC.³⁵ She was charged with failing to supply documents required by the SFO. The SFO said Ms Machkevitch is not a suspect in the corruption investigation.³⁶ Ms Machkevitch denies any wrongdoing.

Since the acquisition of the KMT mine as part of “the DRC Corruption Scheme” is detailed in the DOJ statement of facts, this report sets out the harm caused to local communities and former workers by the scheme admitted by Och-Ziff. When the KMT mining licence was stripped by the Congolese government and awarded to Gertler’s entities, it led to an abrupt closure of the mine and suspension of activities. Thousands of Congolese working at or living near the mine suffered and sustained harm from the sudden closure or failed to benefit from planned developments, as the next section describes.

³¹ *A., B. Limited, C., D. Ltd, E. Limited c. Ministère public du canton de Genève* (n 31) para 3.2. It is mentioned in par. 32 : « Le SFO soupçonne que ces 35 millions \$ ont servi à payer des pots-de-vin dans le cadre de l’acquisition par F. PLC d’un actif minier à Z.. Le gouvernement de la RDC avait effectivement confisqué cet actif d’une société canadienne... ». F.PLC is referred to by the tribunal as ‘the London-based Kazakh firm’ being investigated by the SFO. The SFO’s investigation of ENRC Limited is the only publicly announced investigation of a firm that fits this description.

³² Africa Progress Panel (n 19).

³³ Jon Yeomans, ‘Kazakh Miner ENRC Lodges £70m Damages Claim against SFO’ (*The Telegraph*) <<https://www.telegraph.co.uk/business/2019/03/26/kazakh-miner-enrc-lodges-70m-damages-claim-against-sfo/>> accessed 6 January 2020.

³⁴ ‘ENRC and the SFO: The Saga Continues’ *Economia* <<https://economia.icaew.com/opinion/august-2019/enrc-and-the-sfo-the-saga-continues>> accessed 6 January 2020.

³⁵ Serious Fraud Office, ‘Prosecution of Director of ALM Services UK Ltd for Failure to Produce Documents’ (14 June 2019) <<https://www.sfo.gov.uk/2019/06/14/prosecution-of-director-of-alm-services-uk-ltd-for-failure-to-produce-documents/>> accessed 6 January 2020.

³⁶ *ibid.*

The KMT Project and its Promise for Development

The KMT mine is a rich source of cobalt and copper. The tailings were left behind from an old concentrator previously run by state-owned Gécamines that discarded valuable amounts of copper and cobalt due to the poor recovery rates from processing. The tailings are located in two deposits: the Kingamyambo Tailings dam and the Musonoi River tailings.

1. The **International Finance Corporation's Investment**

The International Finance Corporation (IFC), the private banking arm of the World Bank, was a key investor and required First Quantum to provide concrete social and environmental benefits for residents of local communities and higher standards for local workers. In 2003, an audit of Gécamines conducted by the World Bank highlighted KMT as a priority for investment,³⁷ a view that was reiterated in a later 2008 study which emphasised the importance of the KMT for Kolwezi's economic recovery.³⁸ In 2005-2006, IFC initially invested in the KMT project with Adastra Minerals, before the latter was acquired by First Quantum.³⁹

Dire Conditions in Kolwezi

Kolwezi is at the centre of Congo's copper and cobalt mining industry, with an estimated population of approximately 572,000.⁴⁰ In 2007, as the World Bank and IMF were seeking to help the country's economic recovery, the dilapidated state of Kolwezi's infrastructure was seen as a major impediment to mineral production. The insolvency of Congo's state mining company, Gécamines, contributed to the problem. Local communities in and around Kolwezi depended on the state company for employment, maintaining local infrastructure and providing healthcare and education services. With Gécamines' collapse, these provisions largely disappeared.

Without access to employment opportunities, local residents turned to informal mining activities to survive. By 2008, there were an estimated 30,000 artisanal miners active in the Kolwezi area, including men, women and children.

Loss of Financial Revenues

IFC and United States Agency for International Development (USAID), anxious to re-start industrial-scale mining, supported an economic recovery plan for Kolwezi. The strategy suggested that by 2015 "the four main companies operating in Kolwezi could produce anywhere between US\$ 116.4 million and 1.3 billion in revenues and royalties annually".⁴¹ One of the four companies included in the study was First Quantum, whose reprocessing facilities were anticipated to be operational by 2011 and contributing to the revenues.⁴² As regards to the Kolwezi project, First Quantum said it had expected to pay "\$150 to \$300 million in revenue per year [to] the DRC over the 20+ year term of the Kolwezi Project, in the form of taxes, royalties, dividends and other revenues".⁴³

This anticipated future of increased fiscal returns from mining to reduce Congo's chronic levels of poverty was indeed thwarted by the "DRC Corruption Scheme". The impact on Congolese people has been devastating and forced a difficult decision on international donors keen to

assist the country with poverty alleviation. When First Quantum was stripped of its KMT mining licence, the World Bank, including IFC, temporarily suspended financial assistance to Congo.⁴⁴ In the months that followed, the World Bank and the UK Department for International Development (DFID) delayed funding for some poverty alleviation projects, including work associated with the “growth with governance in the mining sector” project.⁴⁵ Eventually, they resumed, though with reservations.

A. Environmental and Social Commitments

Investment by IFC in the KMT project was conditioned on commitments by First Quantum to meet specific social and environmental standards. IFC prioritised affected communities and emphasised the need for measures to mitigate adverse impacts. IFC required, for example, a high level of impact monitoring on local communities.⁴⁶ First Quantum was required, amongst other things, to prepare and implement a Community Development Plan (CDP), an Environment and Social Impact Assessment (ESIA), a Resettlement Action Plan (RAP) and an initial and revised Environment and Social Management Plan (ESMP) according to IFC’s standards. The documents form part of a set of documents requested by IFC as a condition of its investment (hereinafter called the Project Documents⁴⁷) and were approved by IFC in its Kolwezi Final Action Plan, which mandated a completion and reporting date for each action.⁴⁸ They were further elaborated by surveys conducted by First

³⁷ SNC-LAVALIN International Inc., ‘Étude Sur La Restauration Des Mines de Cuivre et de Cobalt En RDC’ (2013).

³⁸ In 2008 the World Bank reported on the huge potential contribution of mining to Congo’s development. The World Bank constructed scenarios for economic and fiscal returns and identified possible financial contributions that could be designated to poverty alleviation. In a base case scenario, gross revenues from the mining sector were predicted to average approximately \$2.1 billion per annum between 2010-2014 and \$4.2 billion per annum between 2015-2020. : World Bank, ‘Project Appraisal Document on a Proposed Grant in the Amount of SDR 33.1 Million (US\$50 Million Equivalent) to the Democratic Republic of Congo for a Growth with Governance in the Mineral Sector - Technical Assistance Project’ (2010) Report No.: 53116-ZR Annex 9: Economic and Financial Analysis, p. 125 ff. <<http://documents.worldbank.org/curated/en/813701468244798193/pdf/531160PADOP106101Official0Use0Only1.pdf>>.

³⁹ See <https://disclosures.ifc.org/#/projectDetail/SPI/11703>. Alongside IFC’s 7.5% holding, First Quantum (via its subsidiary Congo Mineral Developments Limited) held 65% of the KMT mine, Gécamines 12.5%, the DRC Government 5%, and the Industrial Development Corporation of South Africa 10%. A second tranche was due for approval by IFC in June 2009 (but the project was suspended after the DRC government stripped FQM of its legal title. See <https://disclosures.ifc.org/#/projectDetail/SPI/24920>).

⁴⁰ Estimate of 2016 of 572,942 people, according to Cellule d’Analyses des Indicateurs de Développement, ‘Ville de Kolwezi- Fiche d’identité de la ville’ (CAID) <<https://www.caid.cd/index.php/donnees-par-villes/ville-de-kolwezi/?domaine=fiche>> accessed 7 January 2020.

⁴¹ Pact Inc., ‘Kolwezi Economic Development and Governance Transition Strategy: Final Report’ (2008) p.16, available at https://www.dmeformpeace.org/wp-content/uploads/2017/06/Kolwezi_Economic_Development_and_Gov...Final_.pdf.

⁴² *ibid*, p.9.

⁴³ First Quantum Minerals Ltd, Written evidence - Working Effectively in Fragile and Conflict-Affected States: DRC and Rwanda (2011) para 2.4.3, available at <https://publications.parliament.uk/pa/cm201012/cmselect/cmintdev/1133/1133vw06.htm>.

⁴⁴ See Michael J Kavanagh, ‘IMF Halts Congo Loans Over Failure to Publish Mine Contract’ *Bloomberg* (3 December 2012) <<https://www.bloomberg.com/news/articles/2012-12-03/imf-halts-congo-loans-over-failure-to-publish-mine-contract-2->> accessed 8 January 2020; Felix Njini, ‘IFC Threatens to Suspend DRC Investment over Kolwezi Transfer’ *Metal Bulletin* (26 August 2010) <<https://www.metalbulletin.com/Article/2657623/IFC-threatens-to-suspend-DRC-investment-over-Kolwezi-transfer.html>> accessed 7 January 2020; William Wallis, ‘Congo Deals Threaten Western Aid Supply’ *Financial Times* (26 October 2010) <<https://www.ft.com/content/a9025b56-e117-11df-90b7-00144feabdc0>> accessed 7 January 2020.

⁴⁵ Department for International Development, Further written evidence - Working Effectively in Fragile and Conflict-Affected States: DRC and Rwanda (2011); Global Witness, Further written evidence - Working Effectively in Fragile and Conflict-Affected States: DRC and Rwanda (2011). Submitted to the House of Commons, available at <https://publications.parliament.uk/pa/cm201012/cmselect/cmintdev/1133/1133we04.htm> and <https://publications.parliament.uk/pa/cm201012/cmselect/cmintdev/1133/1133we11.htm>.

⁴⁶ First Quantum had to conduct monthly analysis of water quality and levels of wells used by local communities, monitor the aquatic habitat and fish caught in the surrounding rivers and monitor households who had their land acquired by KMT to ensure alternative lands were available: First Quantum Minerals Ltd, *KMT Final Environmental and Social Management Plan (ESMP)* (2008); First Quantum Minerals Ltd, ‘Revision of Table 3.2 of the ESMP’, *KMT Final Environmental and Social Management Plan (ESMP)* (2009); First Quantum Minerals Ltd, ‘KMT Final Action Plan’.

⁴⁷ The Project Documents are available at <https://disclosures.ifc.org/#/enterpriseSearchResultsHome/kmt>.

⁴⁸ First Quantum Minerals Ltd, ‘KMT Final Action Plan’.

Quantum as part of its baseline studies.⁴⁹ Additionally, IFC conditioned its funding on meaningful stakeholders' consultation and engagement with affected communities.⁵⁰

Many of First Quantum's commitments were never realised. In 2010, after the mine closed as a consequence of "the DRC Corruption Scheme", IFC was forced out of the KMT project. Hundreds of Congolese immediately lost their jobs without warning. The concrete and planned social and environmental benefits arising from IFC's investment were lost and all development projects undertaken by First Quantum abruptly ended.⁵¹

B. Oversight and Safeguards

In addition to providing objective benchmarks, IFC's participation also guaranteed the compliance of First Quantum's social and environmental obligations through strict monitoring and mandatory reporting.⁵² IFC had specific procedures and rules to ensure First Quantum complied with its commitments contained in the Project Documents. For example, IFC was to conduct ongoing reviews of environment and social performance and implementation of the Final Action Plan, as well as to ensure that any environmental and social conditions were met prior to the disbursement of its funds.⁵³ Any waiver of conditions had to be cleared by IFC's senior management and documented.⁵⁴ When IFC was forced out of the project, local residents lost the structure and safeguards that IFC's participation had brought.

⁴⁹ For example, they conducted household survey to examine livelihoods and income: First Quantum Minerals Ltd, 'Annex D: Community Development Plan', *KMT Final Environmental and Social Management Plan (ESMP)* (2008) D.11; aquatic habitat integrity to examine environmental pollution: First Quantum Minerals Ltd, 'Chapter 5: Environmental Baseline', *KMT Environmental and Social Impact Assessment (ESIA)* (2008) p.5.10; and radiation surveys to determine the potential harm from the tailings: First Quantum Minerals Ltd, 'Chapter 7: Assessment of Environmental Impacts', *KMT Environmental and Social Impact Assessment (ESIA)* (2008) p.7.5.

⁵⁰ First Quantum had to establish grievance procedures for affected communities, notably for nuisance effects of dust and noise: First Quantum Minerals Ltd, 'KMT Final Action Plan'; First Quantum Minerals Ltd, *KMT Final Environmental and Social Management Plan (ESMP)* (n 46).; as well as a Public Liaison Committee made up of individuals and representatives of the local population, KMT representatives, NGO and appropriate local Government officials to act as primary interface between stakeholders, including artisanal miners and KMT: First Quantum Minerals Ltd, 'Annex D: Community Development Plan' (n 49) ss 5 and 6.2.2; First Quantum Minerals Ltd, 'KMT Final Action Plan'; First Quantum Minerals Ltd, 'Annex A: Labour and Human Resources Plan, Workplace Health and Safety Plan and Community and Safety Plan', *KMT Final Environmental and Social Management Plan (ESMP)* (2008) A.38.

⁵¹ In January 2010, the mining licence was transferred to Highwind Properties, associated to Dan Gertler. In September 2010, ENRC acquired 50.5% of Camrose, which fully owned Highwind Properties. First Quantum entered into international arbitration alongside the IDC against the DRC for the stripping of the legal title. The case was settled in February 2012 when all of First Quantum's assets in Congo were acquired for \$ 1.25 billion by ENRC: see First Quantum Minerals Ltd, 'First Quantum Closes Sale of Residual DRC Assets to ENRC and Finalizes Settlement of All Claims in Relation to DRC Operations' (2 March 2012) <<https://www.first-quantum.com/Media-Centre/Press-Releases/Press-Release-Details/2012/First-Quantum-Closes-Sale-of-Residual-DRC-Assets-to-ENRC-and-Finalizes-Settlement-of-All-Claims-in-Relation-to-DRC-Operations/default.aspx>> accessed 7 January 2020; and First Quantum Minerals Ltd, 'First Quantum Reaches Agreement With ENRC to Dispose of First Quantum's Residual DRC Assets and to Settle All Claims in Relation to First Quantum's DRC Operations' (5 January 2012) <<https://www.first-quantum.com/Media-Centre/Press-Releases/Press-Release-Details/2012/First-Quantum-Reaches-Agreement-With-ENRC-to-Dispose-of-First-Quantums-Residual-DRC-Assets-and-to-Settle-All-Claims-in-Relati/default.aspx>> accessed 7 January 2020.

⁵² International Finance Corporation (IFC), 'Environmental and Social Review Procedures Manual' s 6; First Quantum Minerals Ltd, 'KMT Final Action Plan'.

⁵³ *ibid.*

⁵⁴ *ibid.*

IFC's Role

IFC is a member of the World Bank Group mandated to use private finance to end extreme poverty and promote shared prosperity.⁵⁵ The World Bank and the IMF played a key role in Congo's emergence from years of conflict, providing loans and technical assistance.

At the time of its investment in the KMT mine, IFC was working to expand its activities in Africa's poorest countries and those emerging from conflict, with Congo identified as a priority under IFC's Conflict and Affected States (CASA) Programme. IFC sought to ensure Congo became "a more hospitable investment destination for those companies willing to apply best practices and encourage widespread, positive development impact"⁵⁶ by, inter alia, improving the investment climate and investing in mining as a key economic sector.

The World Bank was aware of the risks presented by corruption. It identified corruption as a principal factor threatening growth in Congo. The World Bank's was clear: "an ever-escalating spiral of demands for illicit payments [will] ultimately represent a significant competitive disadvantage to the DRC mining sector".⁵⁷

In addition to investing in the KMT project, IFC board also approved a 6% holding in the Kalukundi Mining project in 2007, majority-owned by another Canadian mining company, Africo Resources Limited.⁵⁸ Engagement at an early stage was meant to help mitigate risk going forward, but it soon became apparent that IFC's due diligence underestimated project risks in Congo. Both of IFC's Congo investments were ultimately to collapse because of Gertler's interventions.

⁵⁵ 'Overview' (*The International Finance Corporation*)

<https://www.ifc.org/wps/wcm/connect/CORP_EXT_Content/IFC_External_Corporate_Site/About+IFC_New/AboutIFC> accessed 7 January 2020.

⁵⁶ 'IFC Demonstrates Commitment, Plans Increased Support to DRC' (*International Finance Corporation (IFC)*)

<<https://ifcext.ifc.org/IFCExt/pressroom/IFCPressRoom.nsf/0/B4A873B414F23B2B8525759B00570252?OpenDocument>> accessed 16 January 2020.

⁵⁷ World Bank, 'Democratic Republic of Congo: Growth with Governance in the Mining Sector' (2008) Report No. 43402-ZR p. 3

<<https://siteresources.worldbank.org/INTOGMC/Resources/336099-1156955107170/drcgrowthgovernanceenglish.pdf>>.

⁵⁸ International Finance Corporation (IFC), 'IFC Invests in Kalukundi Mining Project to Support Revitalization of Democratic Republic of Congo' (21 November 2007)

<<https://ifcextapps.ifc.org/ifcext/pressroom/ifcpressroom.nsf/0/45DC795FB44E40FC8525739A00606D87?OpenDocument>> accessed 7 January 2020.

The Congolese Victims of Corruption

The impact of the KMT mine's closure devastated the lives of thousands of people working at and living near the mine. First Quantum's mining project had held great promise for them. When the mine closed, approximately 700 Congolese workers immediately lost their jobs and their corresponding benefits. The Project Documents show the company was required to deliver clean water and improved access to healthcare and education for some 32,000 residents. The project was also to contribute towards the clean-up of the toxic air and water pollution at a nearby river that severely impacted people's daily lives.

Two Distinct Groups of Congolese Victims

RAID and AFREWATCH have documented specific and direct damages of the "DRC Corruption Scheme" to the livelihoods, health and environment of thousands of Congolese residents. During our research, RAID and AFREWATCH identified two distinct groups of Congolese victims who suffered, and continue to suffer, direct harm as a result of the "DRC Corruption Scheme", particularly events relating to the ownership of the KMT project:

i. Group 1: 32,000 residents of local communities on or near the KMT mine

The first group of victims are an estimated 32,000 local residents (the "Directly Affected Population")⁵⁹ living in twelve communities on or near the KMT mining concession in 2009 when the mine closed. These residents suffered harm caused by the loss of specific benefits and safeguards that First Quantum had committed to providing. People in these communities are direct victims of the "DRC Corruption Scheme" in which First Quantum was forced to abandon its concession, and with it, its promises of social and economic development projects. At the time of RAID and AFREWATCH's research in 2019, there were an estimated 114,500 people living in these communities.⁶⁰ For nine years between 2009 (when First Quantum was stripped of its KMT mining license) and 2018 (when ERG re-started some community development projects), local residents living near the mine were deprived of all benefits the project had committed to deliver and which, in some cases, had already begun. These included:

- The provision of clean drinking water so local residents would not be forced to drink polluted river water, which First Quantum's tests had shown was not fit for human or animal consumption.
- 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.

⁵⁹ RAID has based its estimate on figures provided by the First Quantum, under IFC, calculated in 2009, which amounts to 32,037 people. It includes Kashala (60), Kipepa (31), Kamimbi (970), Samukinda (330) UCK/UZK (3,100), Samukonga (78), Tshala (7,621) and Tshamudende (15,000), Luilu (5,000), Kisangama (480), Ndzanzama (120), and Kanyembo (120) (total of 32,037). It also included Kolwezi town (248,798) in its Affected Population (grand total of 280,835), but RAID didn't calculate Kolwezi as further research on the impact it has suffered needs to be conducted: First Quantum Minerals Ltd, 'Annex B: Framework Resettlement Action Plan', *KMT Final Environmental and Social Management Plan (ESMP)* (2008) B.19-B.20.

⁶⁰ Figure based on official medical documents and testimonies from customary chief collected by RAID.

- Programmes to facilitate **access to education and healthcare** by building schools and health clinics, as well as the direct provision of healthcare services through vaccination and malaria prevention campaigns.
- **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.

These benefits were halted overnight following KMT's closure. It left thousands of residents plagued with ongoing air and water pollution, sickness and a lack of educational opportunities, deprived of alternatives. At the time of this report's publication, of the benefits above, only the provision of clean drinking water had been provided by ERG to the communities, which was delivered in 2018. The vast majority of the residents living near to the KMT mine continue to remain deprived of the other benefits the KMT project intended to provide. ERG informed RAID in May 2019 that other benefits were being implemented, including upgrading the company's three-kilometre private access road to the mine site.

ii. Group 2: the KMT workers

The second group consists of an estimated 700 Congolese workers, with their dependents, employed by First Quantum or its sub-contractors, who suffered harm when they suddenly lost their jobs and their corresponding benefits following the sudden closure of the KMT mine. Overnight, these workers lost not only their jobs but also valuable free healthcare for themselves and their immediate family and prospects for future employment. Many of the workers were on contracts linked to the construction phase of the mine, which still had several months to run before being completed. Documents from First Quantum confirmed it intended to keep many of the workers into its operational phase.⁶¹

Had First Quantum's mining licence not been cancelled, hundreds of these workers might reasonably have expected their employment and corresponding benefits to continue. 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, according to scores of interviews conducted by RAID and AFREWATCH. Based on RAID and AFREWATCH's interviews with 175 former workers, almost none were re-hired by ERG.⁶²

1. Direct Harm to Communities

Local communities suffered specific collective and social harms following the "DRC Corruption Scheme" and the abandonment of development projects undertaken by First Quantum. Specifically, communities suffered from:

⁶¹ First Quantum Minerals Ltd, 'Annex D: Community Development Plan' (n 49) A.10, stating: "as the construction period draws to close, the good artisans will be absorbed by KMT as permanent employees".

⁶² RAID individual interviews, 11 former KMT workers, Luilu, Kolwezi area (22 and 23 October 2018); RAID and AFREWATCH individual interviews, 18 former KMT workers, Kolwezi (3 and 4 April 2019); RAID and AFREWATCH individual interviews, 136 former KMT workers, Luilu (5, 6 and 7 April 2019), and; RAID and AFREWATCH individual interviews, 10 former KMT workers, Kolwezi (8 April 2019).

- **Continued environmental pollution.** First Quantum committed to alleviating environmental pollution around its concession. It aimed at reprocessing the old tailings in the Musonoi River and at the Kingamyambo site and depositing them in a modern tailings storage facility (TSF) to avoid further air and water pollution and prevent exposure to trace metals.⁶³ According to the final commitment review published by First Quantum, “[a]ll tailings will be removed from the Kingamyambo footprint site as part of the mining exercise” and “trials will be conducted to determine the best way of rehabilitating this site”.⁶⁴ The Final Action Plan required air emissions, TSF seepage plans and effluent management plans to be in place by plant commissioning in mid-2010.⁶⁵
- **Delayed construction of boreholes to access clean water.** By removing the tailings from the Musonoi River, First Quantum aimed to clean up the river water used by local communities, which it found to be unfit for human or animal consumption.⁶⁶ In the interim, First Quantum committed to providing clean drinking water to affected residents through the installation of wells with manual hand pumps.⁶⁷ First Quantum had started to drill two of them but did not have the opportunity to install the required pipes for the wells to function.⁶⁸ In 2017 and 2018, ERG drilled 10 wells in the affected communities.⁶⁹ In the interim period of nine years, communities had no access to clean drinking water and were forced to rely on the polluted river water.
- **Abandonment of programmes to support access to basic education and healthcare.** First Quantum committed to establishing a non-profit foundation endowed with \$20 million for local community development projects. The foundation was to implement community-selected, sustainable development projects that fell within IFC’s guidelines.⁷⁰ Projects were to be selected by the communities and could have included initiatives such as agricultural and business support programmes, as well as the construction of clinics or schools. According to the agreed timetable in the Community Development Plan, the KMT foundation was scheduled to begin the first cycle of project implementation just as First Quantum’s mining licence for the KMT mine was cancelled.⁷¹
- **Delayed resettlement of the small traditional village of Samukonga,** 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 (such as the clearing of fields and provision of seeds) to help

⁶³ First Quantum Minerals Ltd, *KMT Environment and Social Impact Assessment (ESIA)* (2008). Available at <https://disclosures.ifc.org/#/projectDetail/ERS/11703>.

⁶⁴ First Quantum Minerals Ltd, ‘Revision of Table 3.2 of the ESMP’ (n 46).

⁶⁵ First Quantum Minerals Ltd, ‘KMT Final Action Plan’, Performance Standard 3, table entries 14, 15 and 16.

⁶⁶ First Quantum Minerals Ltd, ‘Executive Summary’, *KMT Final Environmental and Social Management Plan (ESMP)* (2008) p. XX.

⁶⁷ First Quantum Minerals Ltd, *KMT Final Environmental and Social Management Plan (ESMP)* (n 46) XX; First Quantum Minerals Ltd, ‘Chapter 5: Environmental Baseline’ (n 49) p.5.10.

⁶⁸ RAID first field visit, Kamimbi village, Kolwezi area (24 October 2018); RAID first field visit, Tshala village, Kolwezi area (10 April 2019).

⁶⁹ RAID field visits, Kamimbi village, Tshala village, Samukonga village (new location), Samukinda village, UCK, Tshamudende, Luilu, Kashala village, Kipepa village, Kolwezi area (18 October-7 November 2018; 28 March-18 April 2019; 14-29 October 2019).

⁷⁰ First Quantum Minerals Ltd, ‘Executive Summary’ (n 66) p.i. For a list of preliminary projects see First Quantum Minerals Ltd, ‘Annex D: Community Development Plan’ (n 49) D.22.

⁷¹ First Quantum Minerals Ltd, ‘Annex D: Community Development Plan’ (n 49) pt 8.2.

restore residents' livelihoods.⁷² ERG completed resettlement of the village on 30 November 2018, more than nine years later.⁷³

Further, First Quantum, through its Community Development Plan, was to provide for healthcare-related services, including community health outreach programmes focused on infant immunisation, HIV/AIDS and malaria prevention and treatment.⁷⁴ According to the Final Action Plan, these initiatives were underway and First Quantum was to have provided community health impact statistics to IFC in May 2009 and then on an ongoing basis.⁷⁵

During the research, RAID and AFREWATCH compared First Quantum's commitments and the effect on communities when its KMT mining licence was stripped with subsequent actions by ERG once it acquired the concession. Local residents waited more than nine years before projects re-started, while others remain unfulfilled. During these nine years of halted development, communities were effectively abandoned in a heavily polluted environment, with little or no infrastructure, social programmes or services to cater for their basic needs.

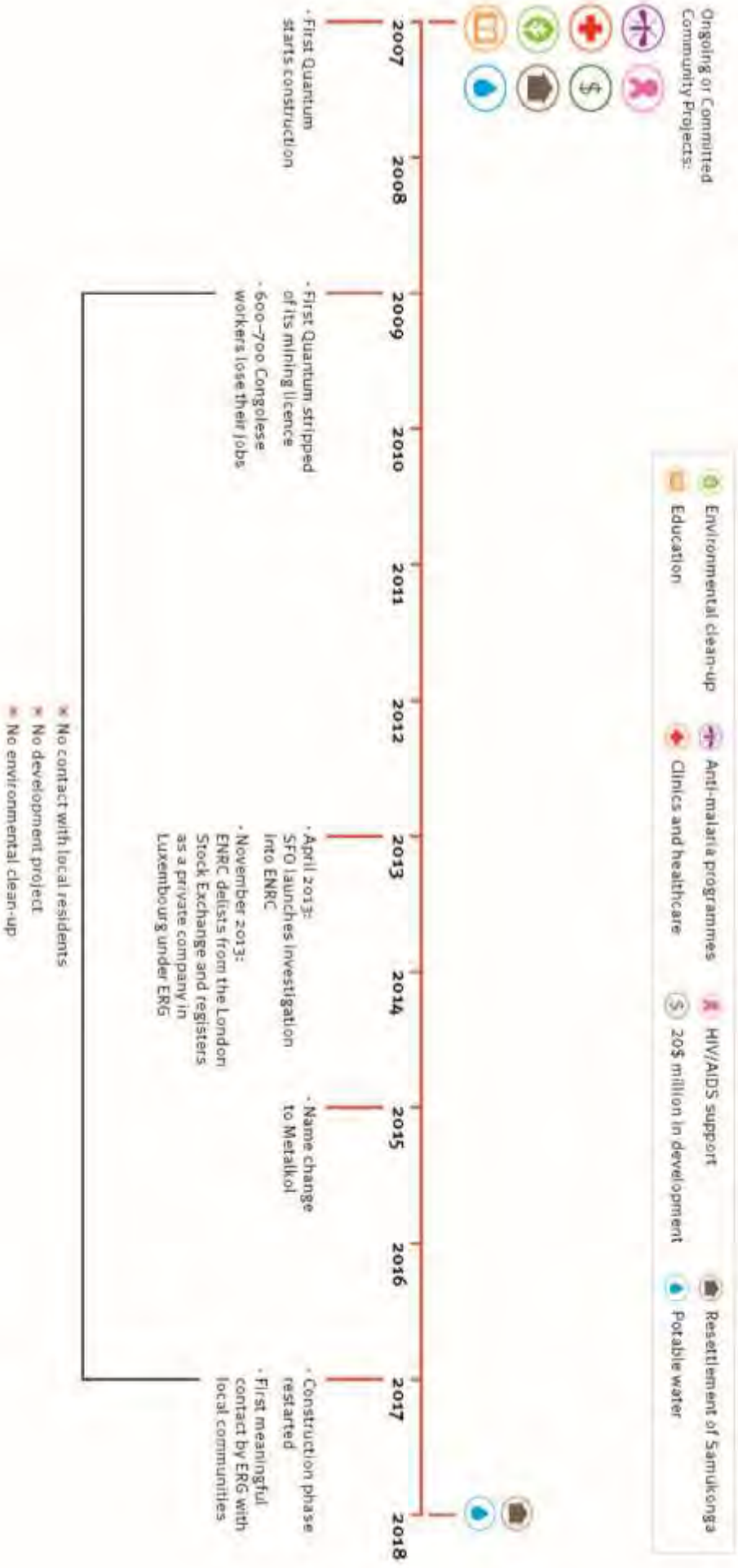
⁷² First Quantum Minerals Ltd, 'KMT Samukonga Resettlement Action Plan (RAP)', *KMT Final Environmental and Social Management Plan (ESMP)* (2008); First Quantum Minerals Ltd, 'KMT Final Action Plan' (n 48) s Performance Standard 5, table entry 21.

⁷³ RAID group interviews, Chief Samukonga and President of the development committee, New Samukonga, Kolwezi area (11 April 2019).

⁷⁴ First Quantum Minerals Ltd, 'KMT Final Action Plan' (n 48); First Quantum Minerals Ltd, 'Annex D: Community Development Plan' (n 49); First Quantum Minerals Ltd, *KMT Environment and Social Impact Assessment (ESIA)* (n 63).

⁷⁵ First Quantum Minerals Ltd, 'KMT Final Action Plan', Performance Standard 1, table entry 4. The community health impact statistics were to be provided during regular IFC environmental and social monitoring visits.

Timeline of Significant Events



A. An Unhealthy and Polluted Environment

Local communities living in or around the concession endure an extremely polluted environment through the air they breathe, the soil in which they grow their crops and the water they drink. As a result, Congolese residents have suffered serious and highly detrimental health effects for more than nine years, according to dozens of local residents interviewed by RAID and AFREWATCH. These adverse impacts could have been mitigated if First Quantum's project had been on course to alleviate environmental pollution around the concession by reprocessing the tailings. Instead, as a direct consequence of the "DRC Corruption Scheme", tens of thousands of residents were left breathing and ingesting dangerous pollutants and minerals for a further nine years.

i. Air pollution

One of the tailings, the Kingamyambo Tailings (see map), covers an area of 3 km² and reaches a height of 20 metres.⁷⁶ The entire area is a desert of white dust. No reclamation work had started on the dam surface, which remains exposed to wind and rain.⁷⁷ Since it is badly eroded, it is a major source of dust which contains trace metals. The KMT project intended to reduce the dust levels in the area by depositing the tailings in a modern storage facility with a covering. In addition to the dust from the tailings, villages suffer from severe dust generated by heavy vehicles and lorries driving to and from the mine on the unpaved local roads. Luilu, Tshamudende and Tshala sit alongside the unpaved national road, where traffic is at its most intense. A private road leading to the KMT mine entrance also affects the population of Tshala. Local residents told RAID and AFREWATCH that during the dry season, the dust levels are unbearable.



Right: View of the Kingamyambo Tailings, 2019

Left: A truck near the KMT mine, 2019.

⁷⁶ First Quantum Minerals Ltd, 'KMT Samukonga Resettlement Action Plan (RAP)' (n 72).

⁷⁷ *ibid* p.3.

As Tshala's customary chief recalled:

We seriously suffer from the dust here. Now, it is a little bit better because it's the end of the rainy season, but during the dry season, it is horrible. From 15h to 21h, there are so many trucks we can't see in front of us. We can't even see one metre in front. There are plenty of problems with eye infections, lungs, coughing. My wife has a problem with her lungs. It is very common here in Tshala because of the dust.⁷⁸

As part of its environmental baseline study required by IFC, First Quantum monitored the dust fallout level in the villages around its concession. The baseline study reported that Luilu village presented dust levels that exceeded South African guidelines⁷⁹ for dust fallout in residential areas and "may have a nuisance and health impact on the residents in Luilu village".⁸⁰ As evidenced by RAID and AFREWATCH's observations, as well as interviews with local residents, the level of dust does not solely affect the residents of Luilu. Every village near the KMT mine, especially those near to the roads or the Kingamyambo Tailings, are negatively affected.

UCK village is a few metres from the Kingamyambo Tailings and is particularly badly affected. When the wind blows, a blanket of white dust falls onto the village. A community leader of UCK described the consequences:

UCK is adjacent to the tailings. During the dry season all of UCK is covered in dust: beds, books, houses, etc. There is intense coughing that leads to pneumonia. One of my friends died in 2009 because of the coughing and the dust problem. He suffered so much because he lived next to the tailings. He was one who lived closest to it – maybe five metres [away].⁸¹

When RAID and AFREWATCH visited villages surrounding the KMT concession, residents frequently complained about severe coughs, respiratory difficulties and eye and skin dryness. A resident described how the dust is affecting him:

"There is also the problem of cough and burning sensation in the eyes. It happens mostly when the wind blows the [Kingamyambo] tailings towards us. It happens often, mainly during the dry season".⁸²

Two doctors from the general hospital in Kolwezi interviewed by RAID and AFREWATCH also noticed that the high level of dust exacerbated cases of pneumonia, bronchitis and asthma during the dry season. They explained that mining companies had cut down trees and other shrubbery that previously helped to block the wind. One of them recalled:

"Now there is nothing to stop the wind from blowing the dust. There is a direct correlation with seasons. During the dry season: more cough. During

⁷⁸ RAID interview, Chief Tshala, Tshala village, Kolwezi area (10 April 2019).

⁷⁹ Congo had no dust fallout guidelines so South African ones were used as a guide.

⁸⁰ First Quantum Minerals Ltd, 'Chapter 5: Environmental Baseline' (n 49) p.5.49. "South African guidelines" refers to the South African National Environmental Management Air Quality Act (No 39 of 2004) and the South African National Dust Control Regulations.

⁸¹ RAID interview, President of the Community Committee, UCK, Kolwezi area (31 March 2019).

⁸² RAID individual interview, resident of Kamimbi, Kamimbi village (11 April 2019).

the rainy season: more cases of malaria and acid burns because of the overspill from water basins”.⁸³

Concerns about the high levels of dust are exacerbated by the contents of the dust, which contain traces of metals dangerous for humans. As part of its baseline study, First Quantum analysed the trace metals and concluded that the dust was rich in alumina and iron with traces of lead, manganese, zinc, chrome, cobalt, mercury and nickel.⁸⁴ The First Quantum study found that “the presence of some of these metals may pose a health risk”.⁸⁵ The baseline study also found that the dust contained quartz and aluminium silicates. The study said, “the presence of quartz is a concern since prolonged exposure via the respiratory pathway can cause silicosis”.⁸⁶ The UK’s Health and Safety Executive describes silicosis as “a long-term lung disease...the effect of which continues to develop after exposure has stopped and is irreversible. Sufferers usually become house or bed-bound and often die prematurely due to heart failure”.⁸⁷

According to scientific research, inhalation of cobalt dust may also cause adverse respiratory, visual and neurological effects. Some of the effects documented by scientists in 2017 include hypertension, faster heart rate, nausea, vomiting, reduced visual acuity, complete blindness, blurred vision, poor concentration, memory loss and headaches. Currently, the scientific community recognise three medical effects associated with the inhalation of hard metal dust: (1) asthma (2) hypersensitivity pneumonitis (a disease of the lungs) and (3) interstitial pneumonia (a form of lung disease).⁸⁸

ii. *Water pollution*

Two major river systems are affected by mining activities in the Kolwezi area: the Lulu River to the west and its tributary, which joins the Musonoi River to the east.⁸⁹ The Musonoi River runs through the KMT concession and is the main source of water for surrounding villages. The other tailings, the Musonoi River Tailings, comprise a low-lying area of around 11 kilometres long through which the river flows.⁹⁰ The river is polluted by mineral residue seeping from the Musonoi River tailings.⁹¹ Prior to the project’s implementation, First Quantum monitored the Musonoi River between June 2004 and September 2005 and found heavy metal contamination levels above the World Health Organisation (WHO) Guidelines for drinking water.⁹² Additionally, First Quantum tested the Lulu River and found the water was “unsuitable for human or animal consumption”.⁹³

According to a recent academic study published in December 2018, it is beyond “any doubt that some populations, especially workers and residents in the vicinity of mining

⁸³ RAID interview, General administrator and Director Physician, General Hospital Mwangeji, Kolwezi (1 April 2019).

⁸⁴ First Quantum Minerals Ltd, ‘Chapter 5: Environmental Baseline’ (n 49) pp.5.47-5.54. More environmental studies have been conducted by IFC and can be found in the Project Documents.

⁸⁵ *ibid* p.5.51.

⁸⁶ *ibid*.

⁸⁷ For further information see <http://www.hse.gov.uk/lung-disease/silicosis.htm>.

⁸⁸ Laura Leyssens and others, ‘Cobalt Toxicity in Humans-A Review of the Potential Sources and Systemic Health Effects’ (2017) 387 Toxicology 43.

⁸⁹ First Quantum Minerals Ltd, ‘Chapter 3: Project Description’, *KMT Environment and Social Impact Assessment (ESIA)* (2008) pt 3.8.1.

⁹⁰ *ibid* 3.2; First Quantum Minerals Ltd, ‘KMT Samukonga Resettlement Action Plan (RAP)’ (n 72) p.3.

⁹¹ First Quantum Minerals Ltd, ‘Chapter 3: Project Description’ (n 89) pt 3.8.1.

⁹² First Quantum Minerals Ltd, ‘Chapter 5: Environmental Baseline’ (n 49) pp. 5.10 and 5.61.

⁹³ First Quantum Minerals Ltd, ‘Executive Summary’ (n 66) p.XX.

operations, are exposed, sometimes very heavily, to trace metals, mainly cobalt and uranium”.⁹⁴ Scientific and academic research confirmed the level of pollution and heavy trace metals contained in both rivers. Research published in 2013 showed that the metal concentrations in the waters of the Luilu and Musonoi Rivers exceed the WHO and the Aquatic Quality Guidelines for the Protection of Aquatic Life’s recommended limits.⁹⁵ A separate study published in January 2018 found extreme contamination by toxic metals in the Luilu River which could cause serious human health and environmental risks.⁹⁶

According to local residents interviewed by RAID and AFREWATCH, the river has turned grey and brown over the years, becoming almost a slurry of mud in certain parts. By reprocessing these tailings, the KMT project had intended to clean up the Musonoi River and return the land beneath the tailings to alternative uses, such as agriculture.

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

- RAID individual interview, resident of UCK, Kolwezi (27 October 2018)

One interviewee said, “We have no other source of water other than the river, so even if it looks polluted, we have to use that water. There are a lot of cases of infections [and diseases] related to the use of the river water”.⁹⁷

Communities rely heavily on the river for their daily activities. According to local residents interviewed by RAID and AFREWATCH, the river is regularly used for drinking and cooking.⁹⁸ For example, it is crucial for the preparation of fofou, a traditional African staple food made of cassava (manioc) flour. Raw cassava must be soaked for extended periods before it can be consumed. Local residents have no option but to use the toxic river water for this process. Residents also bathe in the polluted river and some described to RAID and AFREWATCH how their skin itches and burns after washing.⁹⁹

Local residents also use the river water to irrigate their crops. As a result, the polluted water is absorbed into food crops, which are in turn consumed by local communities. Residents interviewed by RAID and AFREWATCH expressed concerns about ingesting the polluted water:

“We have to water our gardens with the river water, but the water is polluted, and it pollutes our vegetables. With the acid in the water, it affects the fish,

⁹⁴ Benoit Nemery and Célestin Banza Lubaba Nkulu, ‘Assessing Exposure to Metals Using Biomonitoring: Achievements and Challenges Experienced through Surveys in Low- and Middle-Income Countries’ (2018) 298 Toxicology Letters 13, p.17.

⁹⁵ Emmanuel K Atibu and others, ‘Concentration of Metals in Surface Water and Sediment of Luilu and Musonoi Rivers, Kolwezi-Katanga, Democratic Republic of Congo’ (2013) 39 Applied Geochemistry 26.

⁹⁶ E Atibu and others, ‘High Contamination in the Areas Surrounding Abandoned Mines and Mining Activities: An Impact Assessment of the Dilala, Luilu and Mpingiri Rivers, Democratic Republic of the Congo’ (2017) 191 Chemosphere.

⁹⁷ RAID individual interview, resident of UCK, Kolwezi (27 October 2018).

⁹⁸ RAID interviews, Kamimbi village, Tshala village, Samukonga village (new location), Samukinda village, UCK, Tshamudende, Luilu, Kashala village, Kipepa village, Kolwezi area (18 October-7 November 2018; 28 March-18 April 2019; 14-29 October 2019).

⁹⁹ *ibid.*

and so we eat the acid as well when we eat the fish. The fish are smaller, and it has become harder to grow vegetables”.¹⁰⁰

The river is an important source of fish for communities. Corrective measures, such as the drilling of wells, does not redress the slow disappearance of fish. A resident of Kipepa expressed, “When we raised the issue of the polluted river water, they came and drilled the well. The problem is that the well doesn’t have fish in it!”.¹⁰¹ One fisherman told RAID and AFREWATCH that he had also noticed the decrease in the number and size of the fish in the river over several years.¹⁰²

iii. Harm caused by living in an unhealthy and polluted environment

First Quantum’s KMT project intended to alleviate much of the pollution described above. It committed to reducing dust levels by depositing the tailings in covered storage facilities and to clean up the Musonoi River through reclamation work.¹⁰³ First Quantum was to monitor the dust fallout levels and the quality of the community groundwater in the villages surrounding the KMT mine.¹⁰⁴ It also established preventive measures to reduce the dust from the unpaved roads during the dry season. The benefits were due to begin in mid-2009, as evidenced by First Quantum’s April 2009 commitment review and Final Action Plan.

These positive environmental impacts never occurred. The work on these projects stopped when First Quantum was stripped of its KMT licence. ERG left the tailings untouched until late 2018.¹⁰⁵ Reduced air pollution due to the containment of the dust from the tailings and the clean-up of the Musonoi River are yet to materialise. While ERG has committed to recommencing these projects, it cannot make up for the suffering local residents have endured during the nine years when water, air and soil pollution continued unabated.

In addition to First Quantum’s assessments, independent scientific and medical studies provide additional indications of the risks to which the local population has been exposed as a result of trace metal exposure. According to medical research, heavy metal exposure may limit the neurodevelopment of children,¹⁰⁶ and a study conducted in Lubumbashi published in 2017 concluded that babies born with a visible birth defect are twice as likely to have a father who has been exposed to heavy metals than babies born without visible birth defects.¹⁰⁷ According to one doctor at the Kolwezi general hospital interviewed by RAID and AFREWATCH, the incidence of birth defects “is increasing and the malformations are

¹⁰⁰ RAID individual interview, resident of Kipepa, Kipepa village, Kolwezi area (13 April 2019).

¹⁰¹ RAID group interview, Chief Kipepa and residents of Kipepa, Kipepa village, Kolwezi area (13 April 2019).

¹⁰² *ibid.*

¹⁰³ First Quantum Minerals Ltd, ‘Chapter 3: Project Description’ (n 89).

¹⁰⁴ First Quantum Minerals Ltd, *KMT Final Environmental and Social Management Plan (ESMP)* (n 46).

¹⁰⁵ ‘Our Recent Top Ten Achievements’ (*ERG Africa*, 11 March 2019) <<https://www.ergafrica.com/our-recent-top-ten-achievements/>> accessed 7 January 2020; see also Fleur Ritzema, ‘ERG’s RTR on Schedule for 2018 Production; Targeting EV’ *Metal Bulletin* (31 October 2017) <<https://www.metalbulletin.com/Article/3763304/ERGs-RTR-on-schedule-for-2018-production-targeting-EV.html>> accessed 7 January 2020.

¹⁰⁶ Sarah Cusick and others, ‘Assessment of Blood Levels of Heavy Metals Including Lead and Manganese in Healthy Children Living in the Katanga Settlement of Kampala, Uganda’ (2018) 18 *BMC Public Health*.

¹⁰⁷ Tony Kayembe-Kitenge and others, ‘Congenital Malformations and Trace Metals: A Case-Control Study from Lubumbashi, DR Congo’, *Conference paper* (2017).

quite serious”. He added, “Some babies die before [reaching] the full term of pregnancy and more women give birth to stillborn babies”.¹⁰⁸

Medical research studies on the health impacts of exposure to trace metals in the Kolwezi area remains limited. Further expert studies and analysis would need to be conducted to determine the precise health effects of an additional nine years of continued exposure to water and dust pollution for residents living near or on the KMT concession.

B. Abrupt End of Community Development Projects

First Quantum’s non-profit foundation, described above, with a projected endowment of \$20 million was anticipated to move ahead with community development projects identified and selected by local communities. According to local residents involved in identifying the priorities, projects included the construction of schools and clinics to improve access to healthcare and education.¹⁰⁹ Consequently, it is reasonable to assume that First Quantum, through its foundation, would have built clinics and schools in the affected villages as part of its mandate. According to the agreed timetable in the Community Development Plan (CDP), the KMT foundation was officially launched and set to schedule the first cycle of project implementation exactly when First Quantum’s KMT licence was cancelled.¹¹⁰

i. *Lack of access to drinkable water*

As part of the KMT project, First Quantum committed to cleaning the Musonoi River by removing the tailings and diverting the river during its reprocessing operations to minimise contamination.¹¹¹ While waiting for this process to be completed, First Quantum agreed to install water wells with manual pumps to provide local residents with clean drinking water.¹¹² The building of these wells began before First Quantum lost its mining rights.

¹⁰⁸ RAID interview, General administrator and Director Physician, General Hospital Mwangeji, Kolwezi (1 April 2019).

¹⁰⁹ RAID interviews, Kamimbi village, Tshala village, Samukonga village (new location), Samukinda village, UCK, Tshamudende, Lulu, Kashala village, Kipepa village, Kolwezi area (18 October-7 November 2018; 28 March-18 April 2019; 14-29 October 2019).

¹¹⁰ First Quantum Minerals Ltd, ‘Annex D: Community Development Plan’ (n 49) pt 8.2.

¹¹¹ First Quantum Minerals Ltd, ‘KMT Final Action Plan’; First Quantum Minerals Ltd, ‘Chapter 3: Project Description’ (n 89) pp. 3.29-3.30.

¹¹² First Quantum Minerals Ltd, ‘Chapter 3: Project Description’ (n 89) pt 3.48; First Quantum Minerals Ltd, *KMT Final Environmental and Social Management Plan (ESMP)* (n 46) p.37.



Above: Unfinished well in Kamimbi, 2019

During RAID and AFREWATCH's field visits, staff saw evidence of unfinished water wells in Kamimbi and Tshala villages which local residents said had been left partially constructed by First Quantum.¹¹³ According to Kamimbi residents, First Quantum drilled the well in July or August 2009 and was due to return shortly after to install the pump and pipes. Before it had time to complete the work, the mine closed. IFC documents also confirm that First Quantum had installed boreholes at both Tshala and Kamimbi villages.¹¹⁴

First Quantum did not have time to provide clean water to any local communities before it was compelled to leave. According to residents interviewed by RAID and AFREWATCH, and confirmed by our field visits,¹¹⁵ no boreholes had been completed by the time KMT was forced to close in 2009, leaving local residents with no other option than to consume and use polluted water or to travel great distances to seek clean drinking water elsewhere.

Some villages, such as Kipepa and Kashala, both located less than two kilometres from the Musonoi River Tailings, had no viable alternative to the water from the river, as they had no individual wells or other sources of drinking water nearby. Residents of Kashala were so concerned about the polluted water that in 2015 they pooled their meagre funds to buy two motorcycles to avoid going to the river.¹¹⁶ Every morning residents drove the two motorcycles thirty minutes to fetch clean drinking water at a distant water point. The effort to collect clean water for the entire village of an estimated 55 residents takes hours.

¹¹³ RAID first field visit and interviews, Kamimbi village, Kolwezi area (24 October 2018); RAID first field visit, Tshala village, Kolwezi area (10 April 2019).

¹¹⁴ International Finance Corporation (IFC), 'Environmental and Social Review Summary of KMT'.

¹¹⁵ RAID field visits and interviews, Kamimbi village, Tshala village, Samukonga village (new location), Samukinda village, UCK, Tshamudende, Luilu, Kashala village, Kipepa village, Kolwezi area (18 October-7 November 2018; 28 March-18 April 2019; 14-29 October 2019).

¹¹⁶ RAID interview, Chief Kashala and residents of Kashala, Kashala village, Kolwezi area (28 October 2018; 13 April 2019 and 24 October 2019).

Continuous Struggle to Access Clean Water at UCK

Residents of UCK village, located at the other end of the river, a few metres from the Kingamyambo Tailings, are forced to cross the polluted river at waist-level with their jerrycans in order to reach one of the two clean sources of water available nearby. The only remaining source of water other than the river originates from a spring underneath a rock next to the river. For nine years, this has been the principal supply of potable water for a population of approximately 4,000 people.

Even then, the water may not be completely clean. One resident interviewed by RAID and AFREWATCH said, “Those who drink that water often fall ill of typhoid. If you are a foreigner here, you will definitely get diarrhoea the first time you drink that water. The water also irritates the skin. At first, the source of water was irritating my skin and giving me pimples and diarrhoea. Now, I have become used to it”.¹¹⁷



Above: a UCK resident collecting water slowly from the spring under a rock, 2019.

The walk to collect water takes two-hours round trip from UCK. Jerrycans are carried back and forth. Filling them from little more than a trickle is an arduous chore.

In April 2018, ERG installed a well with solar panels at UCK. While this has provided some relief, residents said the well does not provide enough water for the estimated 4,000 people living at UCK.



This is compounded by the fact that the cisterns can only be refilled when there is sunlight.

The well is therefore closed on cloudy or rainy days and, when it opens, the waiting time can be extremely long, sometimes more than one day. An elderly woman explained the system:

“When you go to the well, you need to register in the morning, around 7h or 8h. They open the well at 11h and they call you when it’s your turn. We wait on average 1 hour, but it can be more. The well closes at 17h and if it closes before you were called, then it is for the next day. Sometimes, it is just not open at all, because there was not enough sunlight to refill the cistern. Then we have to go to the water source next to the river”.¹¹⁸

ERG told RAID it plans to drill another well at UCK in 2019, but, at the time of publication, this had not yet happened.

¹¹⁷ RAID individual interview, resident of UCK, UCK, Kolwezi area (2 April 2019).

¹¹⁸ *ibid.*

It was not until 2018 that ERG started to drill boreholes in the local villages. The stripping of First Quantum's KMT licence and the shuttering of projects that would have provided access to clean water exposed local residents to the risk of serious illness for more than nine years after the forced departure of First Quantum.

ii. *Lack of access to basic education*

Access to education is a major concern for local communities. As an example, Samukinda village, with a population of 1,800 people, had no school before 2017, when another mining company built one for the local residents. Kashala and Kipepa villages still have no nearby primary or secondary schools. The closest ones are 8-10 kilometres from their villages. Children must leave the village to stay with a relative or family friend in order to attend school as the return journey would be impossible on a daily basis. Unfortunately, those without this option or who cannot afford to send their children away have no choice but to keep them in the village, preventing them from getting even the most basic education. Even when families can afford to send their children away, most don't want to separate the youngest from their mother at an early age, as the chief of Kipepa explained.¹¹⁹ As a result, children rarely attend the first and second years of primary school, as they stay in the village with their families.

First Quantum specifically told the residents of Kipepa, Kashala, UCK, Tshala and Kamimbi that it would build a primary school in each of their villages.¹²⁰ First Quantum was forced to leave before this commitment could be realised. ERG told RAID in a meeting that it has no plan to build schools in the neighbouring villages, but will instead support an educational programme to help children of the general Kolwezi area out of the artisanal mining sector.¹²¹ As a result, the population directly affected by the KMT mine remain without access to education for the foreseeable future.

Interrupted or abandoned education is linked to a generational cycle of poverty, a point emphasised by the customary chief of Tshala: "First Quantum didn't build a school here and it affected a whole generation because kids are our future".¹²² According to World Vision:

"One of the biggest contributors to ending poverty is ensuring children have an education...Children who are not in school are at greater risk of exploitation and early marriage. They're on track for a much lower income once they grow up. This limits the future for their own children, thus repeating the cycle of poverty generation after generation".¹²³

It will be harder for these children to access positions that demand qualifications and thus they risk being left with no options other than agriculture or artisanal mining. Education is

¹¹⁹ RAID group interview, Chief Kipepa, Kipepa village, Kolwezi area (13 April 2019).

¹²⁰ RAID interviews, Kamimbi village, Tshala village, UCK, Kashala village, Kipepa village, Kolwezi area (18 October-7 November 2018 and 28 March-18 April 2019).

¹²¹ RAID interview, meeting with Metalkol Corporate Social Responsibility team, Metalkol site, Kolwezi area (12 April 2019); and see ERG's answer letter, dated 14 June 2019, Annex 1.

¹²² RAID interview, Chief Tshala, Tshala village, Kolwezi area (10 April 2019).

¹²³ Alicia Dubay, 'What Is the Cycle of Poverty?' (*World Vision*, 10 February 2018) <<http://www.worldvision.ca/stories/child-sponsorship/what-is-the-cycle-of-poverty>> accessed 7 January 2020.

incontestably a key factor in economic growth. In a 2018 report, the World Bank enumerated the benefits of basic education:

Education raises human capital, productivity, incomes, employability, and economic growth. But its benefits go far beyond these monetary gains: education also makes people healthier and gives them more control over their lives... Education is a powerful tool for raising incomes. Education makes workers more productive by giving them the skills that allow them to increase their output. Each additional year of schooling typically raises an individual's earnings by 8-10 percent.¹²⁴

The "DRC Corruption Scheme" caused the abandonment of school construction, effectively ending a vital route out of poverty for communities near the KMT mine.

iii. Lack of access to basic healthcare

Only four villages near the KMT mine have basic healthcare facilities. Two of these, Tshala and Kamimbi clinics, were built by First Quantum before its departure in 2009. UCK has two small clinics, one of which is private and a legacy of the construction of infrastructure by the state-owned Gécamines. Tshamudende has four small clinics that serve its population of approximately 70,000 people. Local residents and medical staff interviewed by RAID and AFREWATCH said that none of the clinics is properly staffed or equipped. Almost none has a doctor on-site.¹²⁵



Above: Joyce Clinic in UCK, 2019

¹²⁴ World Bank, 'The World Development Report 2018: LEARNING to Realize Education's Promise' (2018) <<https://www.worldbank.org/en/publication/wdr2018>>.

¹²⁵ RAID interviews, residents of Kamimbi, Kamimbi village, Kolwezi area (24 October 2018 and 11 April 2019); RAID interview, residents of Tshala, Tshala village, Kolwezi area (10 April 2019); RAID interview, residents of UCK, UCK, Kolwezi area (27 October 2018 and 31 Mars, 1-2 April 2019); and RAID interview, residents of Tshamudende, Tshamudende, Kolwezi area (9 April 2019).

Local residents and health officials interviewed by RAID and AFREWATCH said the Kamimbi clinic built by First Quantum in 2007 is the main provider of primary healthcare services in surrounding villages.¹²⁶

“It has become normal to see people die here now”.

- Resident of Samukinda

When RAID and AFREWATCH visited the Kamimbi clinic, it was in a state of disrepair. There were three small rooms, seven beds and very little medicine. At the time of the visit, the clinic served a population of 5,347 according to the official clinic documents seen by RAID and AFREWATCH. Those using the clinic must pay fees to access its basic services.

The chief of Kamimbi described access to healthcare as one of the main problems for his community:

“The clinic has no medicine or equipment. If there are serious cases, we need to go to Kolwezi town by motorbike, which can cost 20,000 FC [\$12.5]. It happens that people cannot afford to go to Kolwezi town and thus stay here in Kamimbi, ill or injured, without proper medical attention”.¹²⁷

Local residents told RAID and AFREWATCH that First Quantum had informed them it would expand the Kamimbi clinic and supply it with basic medicines.¹²⁸ It is unclear if First Quantum would also have provided funding for salaries of medical personnel in the clinic. Nonetheless, the provision of functioning clinics and medicine would have considerably improved access to healthcare for the residents. A resident from Samukinda told RAID how he became accustomed to the sight of death:

“It has become normal to see people die here now. Just the other day, my neighbour had a minor stomach-ache. By evening, he was in excruciating pain. His family was trying to gather enough money to get him to the hospital, which is 12 kilometres away, [but] in the morning his body was already cold. He had died during the night”.¹²⁹

For the other villages, local residents must travel significant distances to seek health treatment or to give birth safely. Accessing healthcare can be particularly difficult for residents of Kipepa and Kashala villages, at the other end of the concession, close to the Musonoi River Tailings, as they are quite isolated and far from such facilities. They must walk long distances to the nearest healthcare provider. Residents from both villages said that First Quantum had committed to building a clinic.¹³⁰

¹²⁶ RAID interviews, residents of Kamimbi, Kamimbi village, Kolwezi area (24 October 2018 and 11 April 2019).

¹²⁷ RAID interview, Chief Kamimbi, Kamimbi village, Kolwezi area (11 April 2019).

¹²⁸ RAID interviews, residents of Kamimbi, Kamimbi village, Kolwezi area (24 October 2018 and 11 April 2019).

¹²⁹ RAID individual interview, resident of Samukinda, Samukinda village, Kolwezi area (24 October 2018).

¹³⁰ RAID interview, residents of Kashala, Kashala village, Kolwezi area (28 October 2018; 13 April 2019 and 24 October 2019); and RAID interviews, residents of Kipepa, Kipepa village, Kolwezi area (13 April 2019).

The customary chief of Kipepa is particularly concerned about the lack of access to healthcare. The closest healthcare centre is 8 kilometres away and, as many people don't have bicycles, they must walk hours to seek medical treatment. They have to carry sick or injured people on their backs: The chief explained that "sometimes, people die on the way to the clinic. You can walk three kilometres and the person dies, so then you have to go back with the body".¹³¹

During a meeting with RAID, ERG confirmed it did not have plans to build clinics in the villages in or around its concession.¹³² The departure of First Quantum left local residents with limited and dwindling access to healthcare services.

iv. Lack of healthcare programmes

First Quantum not only committed to building new clinics but was already supporting healthcare programmes in the neighbouring villages when it was forced to leave. In addition to providing free healthcare facilities and services to their employees, First Quantum also committed, through its Community Development Plan (CDP), to providing healthcare-related services, including community health outreach programmes focused on infant immunisation as well as HIV/AIDS and malaria prevention and treatment.¹³³ The company also committed to implementing a Health Education Programme to encourage good practices in infant and child nutrition, hygiene, malaria, family planning and HIV/AIDS¹³⁴ and to "employ skilled Community Nursing personnel at its project site to provide a Health Advisory Programme that [would] include inter alia infant vaccinations".¹³⁵ The Immunisation Programme was intended to ultimately reach 80 per cent of children under 12 months in Kolwezi.¹³⁶ Its launch was reported in First Quantum's 2009 annual filings.¹³⁷

Local residents told RAID that, to their knowledge, ERG had not re-started any of these health programmes.¹³⁸ In an interview with ERG in the Netherlands in May 2019, ERG officials said they were focusing on "sustainable development". The building of clinics was not considered to fall within this category.¹³⁹

- Malaria prevention programme

One of the most important healthcare programmes provided by First Quantum was intended to reduce the number of malaria cases. In 2007, First Quantum began a malaria prevention programme. The company carried out in-door spraying and provided

¹³¹ RAID interviews, Chief Kipepa, Kipepa village, Kolwezi area (13 April 2019).

¹³² RAID interview, meeting with Metalkol Corporate Social Responsibility team, Metalkol site, Kolwezi area (12 April 2019).

¹³³ First Quantum Minerals Ltd, 'KMT Final Action Plan'; First Quantum Minerals Ltd, 'Annex D: Community Development Plan' (n 49); First Quantum Minerals Ltd, 'Executive Summary' (n 66).

¹³⁴ First Quantum Minerals Ltd, 'Annex D: Community Development Plan' (n 49) D.22.

¹³⁵ First Quantum Minerals Ltd, 'KMT Final Action Plan'; First Quantum Minerals Ltd, 'Annex A: Labour and Human Resources Plan, Workplace Health and Safety Plan and Community and Safety Plan' (n 50) A.39.

¹³⁶ International Finance Corporation (IFC), 'Environmental and Social Review Summary'.

¹³⁷ First Quantum Minerals Ltd, Revised Annual Information Form as of December 31, 2008, March 30, 2009.

¹³⁸ RAID interviews, Kamimbi village, Tshala village, Samukonga village (new location), Samukinda village, UCK, Tshamudende, Lulu, Kashala village, Kipepa village, Kolwezi area (18 October-7 November 2018; 28 March-18 April 2019; 14-29 October 2019).

¹³⁹ RAID interview, meeting with ERG officials and CEO, Amsterdam, The Netherlands (14 May 2019).

insecticide-treated bed nets, personal protection and spraying equipment to local residents.¹⁴⁰ An IFC report stated that First Quantum had:

distributed 2,000 mosquito nets and almost one thousand tubes of mosquito lotion [...], completed indoor residual spraying of almost 1,000 houses in neighbouring villages, launched a malaria education program in all core communities and completed the first phase of an entomological survey to establish which mosquito species and malaria strains are present locally.¹⁴¹

IFC also reported that First Quantum ensured that local “health clinic staff members in Tshala and Kamimbi clinics [were] being trained to read microscope slides to identify malaria in blood samples”¹⁴² and delivered microscopes to each of these community clinics.¹⁴³ A former nurse at Tshala clinic told RAID that First Quantum trained them in prevention, detection and treatment of malaria, HIV and AIDS.¹⁴⁴

The halting of the malaria programme is a harm of particular concern since malaria is one of the leading causes of deaths in Congolese children under five. According to the WHO, in 2009, 29 per cent of deaths in children under five in Congo were caused by malaria.¹⁴⁵ A medical study conducted between 2014 and 2016 in the Sendwe Hospital in Lubumbashi found that 28 per cent of patients under five years of age admitted to the hospital for malaria died.¹⁴⁶ According to medical data collected by RAID from the health zone of Kolwezi, malaria is the most reported disease and amongst the deadliest.¹⁴⁷

Residents of UCK, Kashala, Kipepa and Tshala reported receiving mosquito nets and insect repellent from First Quantum in 2007, 2008 and 2009.¹⁴⁸ They all described how it had helped reduce the number of malaria cases in their respective villages. A former nurse at Tshala clinic interviewed by RAID and AFREWATCH corroborated this view: “After the spraying of houses by First Quantum in Tshala, the decrease in malaria cases at the clinic was blatant. [The effects] lasted for maybe 1 or 2 years”.¹⁴⁹

ERG confirmed that it had not re-started First Quantum’s malaria prevention programme, but instead was providing financial support to the health zone to launch health-related campaigns.¹⁵⁰ According to local community members interviewed by RAID and

¹⁴⁰ First Quantum Minerals Ltd, *KMT Environment and Social Impact Assessment (ESIA)* (n 63); First Quantum Minerals Ltd, *KMT Final Environmental and Social Management Plan (ESMP)* (n 46).

¹⁴¹ International Finance Corporation (IFC), 'Environmental and Social Review Summary'.

¹⁴² *ibid.*

¹⁴³ *ibid.*

¹⁴⁴ RAID individual interview, former nurse at Tshala, Kamimbi village, Kolwezi area (11 April 2019).

¹⁴⁵ 'Malaria Mortality as a Cause of Death in Children under 5' (*UNICEF DATA*, March 2018) <<https://data.unicef.org/topic/child-health/malaria/>> accessed 7 January 2020.

¹⁴⁶ Augustin Mulangu Mutombo and others, 'Severe Malaria and Death Risk Factors among Children under 5 Years at Jason Sendwe Hospital in Democratic Republic of Congo' (2018) 29 *Pan African Medical Journal* <<http://www.panafrican-med-journal.com/content/article/29/184/full/>> accessed 7 January 2020.

¹⁴⁷ According to the annual reports from the Manika health zone, malaria was the most reported disease across all healthcare centres in its zone in 2016, 2017 and 2018 and one of the deadliest alongside HIV and tuberculosis: RAID interviews, administrator of the Manika Health Zone Centre, Kolwezi (27 October 2019). The annual reports from the Manika Health Zone Centre are on file in RAID's office.

¹⁴⁸ RAID interview, residents of UCK, UCK, Kolwezi area (27 October 2018 and 31 Mars, 1-2 April 2019); RAID interview, residents of Kashala, Kashala village, Kolwezi area (28 October 2018; 13 April 2019 and 24 October 2019); RAID interviews, residents of Kipepa, Kipepa village, Kolwezi area (13 April 2019); and RAID interview, residents of Tshala, Tshala village, Kolwezi area (10 April 2019).

¹⁴⁹ RAID individual interview, former nurse at Tshala, Kamimbi village, Kolwezi area (11 April 2019).

¹⁵⁰ RAID interview, meeting with ERG officials and CEO, Amsterdam, The Netherlands (14 May 2019), and see ERG's answer letter, dated 14 June 2019, Annex 1.

AFREWATCH, there had not been any ERG campaigns against malaria yet.¹⁵¹ As a consequence of the “DRC Corruption Scheme”, malaria prevention programmes were curtailed, which is highly likely to have resulted in an increase in malaria cases and a subsequent increase in child mortality.

C. Unfinished Resettlement

To reprocess the tailings without additional harm to local residents, First Quantum committed to resettling the village of Samukonga, with a population of some 80 residents, which was considered too close to the processing facility for its safety.¹⁵² Samukonga village was about fifty metres from the dam, which is used to contain wastewater from the mine.

First Quantum was required to apply IFC guidelines on involuntary resettlement, which were more favourable than Congolese legislation.¹⁵³ The homes due to be built in the resettled village were to be twice as large as the residents’ existing homes and were to be constructed out of brick, with a corrugated iron roof.¹⁵⁴ Residents were to be provided with new fields 1 or 2 kilometres from the site.¹⁵⁵ Residents were also to have access to clean water with the provision of a communal borehole with a hand pump.¹⁵⁶ The new location was to be near Luilu village, which offers improved access to healthcare, clean water, education and commerce opportunities.

The conditions at the new resettled village were in sharp contrast to those at the existing location near the tailings. The existing village had no formal infrastructure or basic services. There were no schools, no clinics and no wells. To collect water, residents had to make a two-kilometre roundtrip to an open-water well. Local residents interviewed by RAID and AFREWATCH said they viewed the proposed resettlement as positive, significantly improving their access to schools, healthcare, clean water and commerce.¹⁵⁷

The construction of the new homes at the site near Luilu village began in October 2009¹⁵⁸ but was never completed by First Quantum. The loss of its KMT mining licence brought the resettlement programme to an abrupt end leaving the residents of Samukonga in limbo and their new homes only partially constructed. They remained in their original homes near the tailings facility for a further nine years. During this time, Samukonga’s residents continued to live metres from the dam without access to healthcare and schools, and an hour’s walk to Luilu’s facilities, which during the rainy season were incredibly difficult to access.

When ERG began construction work at the KMT mine in 2017, it told local residents it would complete the resettlement. On 30 November 2018, ERG finally relocated the residents to their new homes. Although the completion of the resettlement programme is

¹⁵¹ RAID interviews, Kamimbi village, Tshala village, Samukonga village (new location), Samukinda village, UCK, Tshamudende, Luilu, Kashala village, Kipepa village, Kolwezi area (18 October-7 November 2018; 28 March-18 April 2019; 14-29 October 2019).

¹⁵² First Quantum Minerals Ltd, ‘KMT Samukonga Resettlement Action Plan (RAP)’ (n 72).

¹⁵³ *ibid.* The only exception that was higher than IFC standards was for the calculation of compensation which was more favourable under the Congolese regulations and which was therefore applied in the KMT Resettlement Action Plan (RAP).

¹⁵⁴ *ibid.*

¹⁵⁵ *ibid.*

¹⁵⁶ *ibid.*

¹⁵⁷ RAID interviews, residents of Samukonga, Samukonga new village, Kolwezi area (28 October 2018, 11 April 2019 and 23 October 2019).

¹⁵⁸ *ibid.*; First Quantum Minerals Ltd, ‘KMT Samukonga Resettlement Action Plan (RAP)’ (n 72).

welcomed, the extent to which ERG implemented the original Resettlement Action Plan is unclear. The company has built larger houses and provided them with electricity and water supply, which residents view positively,¹⁵⁹ but residents have also been informed that their new fields will be a considerable distance from the new site, rather than the estimated 2 kilometres under the initial plans.¹⁶⁰ This has raised serious concerns. According to residents interviewed by RAID and AFREWATCH, food and agricultural support has been promised by ERG for the first few years to assist with the transition,¹⁶¹ but there is no indication that this will enable residents to sustain themselves over the longer term. There are concerns about how elderly residents will access fields:

“I am concerned for my mother and all the elderly. How are they supposed to live and sustain themselves when the food support stops? That is all they have: their fields. They won’t be able to travel great distances every day to grow and tend their crops. It is not sustainable. I am very worried”.¹⁶²

During an interview with RAID in April 2019, ERG officials in Congo informed RAID that it had been impossible to find agricultural land for the company to purchase near to the resettled village and it was therefore forced to acquire land 11 kilometres away.¹⁶³ ERG officials said the company would provide food support for at least one year, though how the residents might support themselves in the long-term remains uncertain. As both artisanal and industrial mining activities have occupied much of the arable land in the Kolwezi area, little agricultural land remains for local communities. In an environment where the majority of the population depend on agriculture for their basic food needs, this pressure on arable land is a major concern.

2. Direct Harm to Workers and Their Families

Prominent among the victims of the “DRC Corruption Scheme” are the hundreds of Congolese workers who immediately lost their jobs following the closure of the mine.¹⁶⁴ On 16 September 2009, after First Quantum lost its mining licence for the KMT mine, the company laid off an estimated 700 Congolese workers.¹⁶⁵ Since the Project Documents refer to a fluctuating number of employees during the construction phase,¹⁶⁶ this estimate

¹⁵⁹ ENRC/ERG provided both solar panels and gas-based generators as well as taps and shower inside of the houses, all of which surpass First Quantum’s initial Resettlement Action Plan: RAID interviews, residents of Samukonga, Samukonga new village, Kolwezi area (11 April 2019 and 23 October 2019).

¹⁶⁰ First Quantum Minerals Ltd, ‘KMT Samukonga Resettlement Action Plan (RAP)’ (n 72) p.22.

¹⁶¹ RAID interviews, residents of Samukonga, Samukonga new village, Kolwezi area (28 October 2018, 11 April 2019 and 23 October 2019).

¹⁶² RAID group interview, resident of Samukonga, Samukonga new village, Kolwezi area (28 October 2018).

¹⁶³ RAID interview, meeting with Metalkol Corporate Social Responsibility team, Metalkol site, Kolwezi area (12 April 2019).

¹⁶⁴ The mine also employed foreign workers who might constitute a further group of victims of corruption. These have not been included here.

¹⁶⁵ First Quantum Minerals Ltd, Written evidence - Working Effectively in Fragile and Conflict-Affected States: DRC and Rwanda 2011 para 2.4.2 (n 43); see also First Quantum Minerals Ltd, ‘First Quantum Minerals Announces Commencement of International Arbitration Regarding the Cancellation of The Kolwezi Project’ (n 14); First Quantum Minerals Ltd, ‘First Quantum Minerals Suspends Construction at Kolwezi Project’ (n 14).

¹⁶⁶ The KMT Labour and Human Resource Plan mentions an anticipated workforce of between 1,300 and 1,400 people during the peak of the construction phase, of which at least 600 were to be Congolese employees, and between 660 and 750 people during the operations phase. See First Quantum Minerals Ltd, ‘Annex A: Labour and Human Resources Plan, Workplace Health and Safety Plan and Community and Safety Plan’ (n 50). IFC’s project disclosure summary refers to approximately 1,400 persons employed during the peak construction period in December 2008, of which 350 were from overseas, which implies that over 1,000 Congolese workers were employed at that time. IFC also refers to employment increasing once more in June 2009 as earthworks were due to re-start. See International Finance Corporation (IFC), ‘Environmental and Social Review Summary’ under Environmental and Social Mitigation Measures tab, available at <https://disclosures.ifc.org/#/projectDetail/ESRS/24920>. First Quantum mentioned a workforce of 700 jobs at the time of the closure but

is based on the last available information from First Quantum before the licence was cancelled.¹⁶⁷ Around twenty employees remained employed with the liquidator following the closure of the mine to ensure minimal maintenance of the site. These employees were terminated in November 2011, just ahead of the sale to ENRC.¹⁶⁸

During the field research, 175 former workers interviewed individually by RAID and AFREWATCH described in detail the severe impact these job losses had on them and their families.

The former workers interviewed by RAID and AFREWATCH were all employed through local Congolese subcontracting companies used by First Quantum. The majority had a fixed-term contract until the end of the construction phase.¹⁶⁹ The Congolese labour code stipulates that a worker is on a fixed-term contract *unless* he (or she) works for 22 days or more within a 2-month period for the same company. The contract then becomes open-ended and falls within the protection of labour law and associated employers' obligations.¹⁷⁰ Additionally, a fixed-term contract cannot exceed two years, otherwise, it is deemed open-ended.¹⁷¹ Even though the 175 former workers interviewed were on a fixed-term contract until the end of the construction phase, the average length of employment at the KMT project was 28 months of continuous employment before being terminated. This period of employment provided the former workers with the protection and benefits of an open-ended contract. Furthermore, a number of the former workers interviewed said they had been offered a permanent job following the construction phase.¹⁷² The Project Documents support such claims, stating that "as the construction period draws to a close, the good artisans will be absorbed by KMT as permanent employees".¹⁷³

The closure of the KMT mine and the subsequent unemployment of hundreds of Congolese workers is a direct consequence of the "DRC Corruption Scheme". One day, the 700 Congolese workers had formal and stable jobs: the next, they were unemployed. The

didn't differentiate between expatriate and Congolese: First Quantum Minerals Ltd, 'First Quantum Minerals Suspends Construction at Kolwezi Project' (n 14).

¹⁶⁷ International Finance Corporation (IFC), 'Environmental and Social Review Summary'; First Quantum Minerals Ltd, 'First Quantum Minerals Suspends Construction at Kolwezi Project' (n 14).

¹⁶⁸ Following the closure of the KMT mine, they were transferred to the mine liquidator, and paid by him rather than by KMT. They were eventually laid-off in November 2011, often not having been paid for months before that: RAID and AFREWATCH individual interviews, 18 former KMT workers, Kolwezi (3 and 4 April 2019).

¹⁶⁹ Every former worker interviewed by RAID was employed through a local subcontractor by September 2009. Aside from 13 former workers, they were all under a fixed contract until the end of the construction phase. The 13 other former workers were employed by a different local subcontractor and under an open-ended contract: RAID individual interviews, 11 former KMT workers, Lulu, Kolwezi area (22 and 23 October 2018); RAID and AFREWATCH individual interviews, 18 former KMT workers, Kolwezi (3 and 4 April 2019); RAID and AFREWATCH individual interviews, 136 former KMT workers, Lulu, Kolwezi area (5, 6 and 7 April 2019), and; RAID and AFREWATCH individual interviews, 10 former KMT workers, Kolwezi (8 April 2019).

¹⁷⁰ Article 40 of the Congolese Labour Law Code (Code du Travail) provides that [in French]: « ...Néanmoins, dans le cas d'engagement au jour le jour, si le travailleur a déjà accompli vingt-deux journées de travail sur une période de deux mois, le nouvel engagement conclu, avant l'expiration des deux mois est, sous peine de pénalité, réputé conclu pour une durée indéterminée. »

¹⁷¹ Article 41 of the Congolese Labour Law Code (Code du Travail) provides that [in French]: « Le contrat à durée déterminée ne peut excéder deux ans...L'exécution de tout contrat conclu en violation des dispositions du présent article...constituent de plein droit l'exécution d'un contrat de travail à durée indéterminée. »

¹⁷² RAID individual interviews, 11 former KMT workers, Lulu, Kolwezi area (22 and 23 October 2018); RAID and AFREWATCH individual interviews, 18 former KMT workers, Kolwezi (3 and 4 April 2019); RAID and AFREWATCH individual interviews, 136 former KMT workers, Lulu, Kolwezi area (5, 6 and 7 April 2019), and; RAID and AFREWATCH individual interviews, 10 former KMT workers, Kolwezi (8 April 2019).

¹⁷³ First Quantum Minerals Ltd, 'Annex A: Labour and Human Resources Plan, Workplace Health and Safety Plan and Community and Safety Plan' (n 50) A.10.

workers were terminated immediately, without notice. One former worker remembers the abrupt end of his contract as follows:



Above: 16 Sept. 2009, KMT closure announced to workers.

“We were all working as usual, and around midday, they just came and told us to stop everything we were doing. If you were driving a truck, you had to leave it there, in the middle of the road. It was so sudden. We didn’t understand what was going on. They told us to gather at the gate. They told us we had to go, that they had a problem with our government. And that was it. We left and never came back”.

The workers received little to no compensation for their years of labour. Some of those interviewed by RAID and AFREWATCH stated they had received between 1-3 months’ salary as “severance” pay, while others received nothing.¹⁷⁴ The workers who immediately lost their jobs received a standard document stating that their employment contracts had been terminated due to a *force majeure* attributed to the Congolese [government](#) ending its partnership with First Quantum. The document said the company may re-hire them if the negotiations with the Congolese government succeeded and First Quantum resumed its activities. First Quantum never resumed its activities, and thus none were re-hired.



Above: Former KMT workers, 2009

There were also between 350 and 400 Indonesian and Filipino workers hired at the KMT mine for the construction phase whose employment was terminated.¹⁷⁵ As foreign workers hired through labour brokers their situations would likely have been precarious. RAID has no first-hand knowledge of what happened to them, but it is reasonable to believe they were also adversely affected by the sudden closure of the mine.

A. Loss of Employment

For the KMT workers, the “DRC Corruption Scheme” had a direct impact: the sudden loss of their jobs. As a result, they lost access not only to a stable and regular income but also

¹⁷⁴ Former workers interviewed mentioned having received either no compensation at all, or between one to three months’ worth of salary: RAID individual interviews, 11 former KMT workers, Lulu, Kolwezi area (22 and 23 October 2018); RAID and AFREWATCH individual interviews, 18 former KMT workers, Kolwezi (3 and 4 April 2019); RAID and AFREWATCH individual interviews, 136 former KMT workers, Lulu, Kolwezi area (5, 6 and 7 April 2019), and; RAID and AFREWATCH individual interviews, 10 former KMT workers, Kolwezi (8 April 2019).

¹⁷⁵ First Quantum Minerals Ltd, ‘Annex A: Labour and Human Resources Plan, Workplace Health and Safety Plan and Community and Safety Plan’ (n 50) A.10; International Finance Corporation (IFC), ‘Environmental and Social Review Summary’.

to the free healthcare services provided by the mine.¹⁷⁶ It is important to contextualise the loss of formal employment in the Kolwezi area: secure jobs are extremely scarce, and alternative livelihoods rarely bring in enough income to properly feed an entire family. Losing a stable job too often means malnutrition, illness and interruption of education for children.

i. Lack of opportunities and unemployment

Former workers interviewed by RAID said that they had been unable to find new jobs, despite their best efforts do so.¹⁷⁷ Only 36 people out of the 175 interviewed had found formal employment following the closure of the KMT mine, even if this consisted of only a short fixed-term contract. Amongst this group, it took on average 3 years to find another job, despite continuously applying for work.

Kolwezi is at the centre of Congo's copper and cobalt mining industry, with an estimated population of 572,000.¹⁷⁸ Due to a lack of public services, few are educated and thus qualified for skilled positions within industrial mines. Industrial mining companies often hire expatriate workers, including those from China and other Asian countries, for the skills they are seeking. Consequently, employment positions for Congolese residents are extremely scarce.

RAID interviewed a former worker at the KMT mine:

“I tried to apply several times, but I never had any response. If the manager from the hiring company is from somewhere else, they always hire people from there, not from here, Kolwezi. I applied so many times. I can't even count how many”.¹⁷⁹

After the stripping of KMT's mining licence, many of the former workers turned to subsistence farming or to working in the artisanal mining sector, where conditions are precarious and often dangerous.¹⁸⁰ For example, after losing her job at the KMT mine, a mother of six had no choice but to turn to subsistence agriculture to survive. But it was extremely difficult to make ends meet with the minimal crops she managed to cultivate. She told RAID and AFREWATCH she felt she had no choice but to resort to artisanal mining:

“When I was dismissed, I greatly suffered. I looked for work afterwards, but I couldn't find any. All my children had to stop attending school. I turned to agriculture, but the harvest was not good – I couldn't reap enough to feed my children. Before, no one needed fertiliser, but now you can't get a good harvest without it. I then had to resort to artisanal mining. I wash the minerals in the river. My husband died in 2017. I am all alone now”.¹⁸¹

¹⁷⁶ First Quantum Minerals Ltd, 'Annex A: Labour and Human Resources Plan, Workplace Health and Safety Plan and Community and Safety Plan' (n 50).

¹⁷⁷ RAID individual interviews, 11 former KMT workers, Luilu, Kolwezi area (22 and 23 October 2018); RAID and AFREWATCH individual interviews, 18 former KMT workers, Kolwezi (3 and 4 April 2019); RAID and AFREWATCH individual interviews, 136 former KMT workers, Luilu, Kolwezi area (5, 6 and 7 April 2019), and; RAID and AFREWATCH individual interviews, 10 former KMT workers, Kolwezi (8 April 2019).

¹⁷⁸ Estimate of 2016 of 572,942 people, according to Cellule d'Analyses des Indicateurs de Développement (n 40).

¹⁷⁹ RAID individual interview, former KMT worker, Luilu, Kolwezi area (5 April 2019).

¹⁸⁰ For an explanation of the conditions in artisanal mining in the DRC, see Amnesty International Ltd, "This Is What We Die for": Human Rights Abuses in the Democratic Republic of the Congo Power the Global Trade in Cobalt" (2016).

¹⁸¹ RAID individual interview, former KMT worker, Kolwezi (3 April 2019).

Another former worker described the harsh reality facing him after being terminated from the KMT mine:

“Since 2010, I am an artisanal miner. I couldn't get a job with another mining company because they all ask for money in order to get the job. It is normal for artisanal miners to die here – it is very hard and dangerous. I do not earn much. Compared to my time at KMT, not all my kids are going to school. They need to alternate depending on their needs. It is really unstable conditions”.¹⁸²

Others RAID interviewed faced similar circumstances “I am an artisanal miner solely because there are no other options here. There are no jobs. Being an artisanal miner is very hard. I wouldn't do it if I had the choice. It is only so we can eat and send our kids to school. There is nothing here. There is only suffering”.¹⁸³

ii. *Loss of a stable income*

While employed at the KMT mine, workers benefitted from a valuable regular income. Former workers interviewed by RAID and AFREWATCH reported making a salary of between \$200 to \$500 per month.¹⁸⁴ The average salary earned at the time by the 175 former workers interviewed was approximately \$322.¹⁸⁵ On average, each worker had seven dependents relying on that income.¹⁸⁶ The former workers said that this income sustained them and their families and permitted their children to receive some basic schooling.



Above: Former KMT workers, 2009

Richard*, a former worker employed in the environmental department, was one of the 20 people who stayed at the KMT mine for months following its closure. He was lucky enough to find work with another mining company in 2012. But when the company downsized a few months later, he also lost that job. Without other alternatives, he turned to artisanal

¹⁸² RAID individual interview, former KMT worker, Luilu, Kolwezi area (23 October 2018).

¹⁸³ RAID individual interview, former KMT worker, Luilu, Kolwezi area (7 April 2019).

¹⁸⁴ RAID individual interviews, 11 former KMT workers, Luilu, Kolwezi area (22 and 23 October 2018); RAID and AFREWATCH individual interviews, 18 former KMT workers, Kolwezi (3 and 4 April 2019); RAID and AFREWATCH individual interviews, 136 former KMT workers, Luilu, Kolwezi area (5, 6 and 7 April 2019), and; RAID and AFREWATCH individual interviews, 10 former KMT workers, Kolwezi (8 April 2019).

¹⁸⁵ The average salary was 266,088Fc. The former workers were paid in Congolese francs (Fc), as the exchange rate with USD was extremely volatile. As a consequence, it is difficult to convert to a fixed amount, but RAID used the exchange rate of 826,36025 dated 1 October 2009 at <https://fxtop.com/en/historical-currency-converter.php?A=266100&C1=CDF&C2=USD&DD=01&MM=10&YYYY=2009&B=1&P=&I=1&btnOK=Go%21>. According to the St. Louis branch of the U.S. Federal Reserve, the average exchange rate for the year 2009 was 809,78583: <https://fred.stlouisfed.org/series/FXRATECDA618NUPN>.

¹⁸⁶ The average number of dependent children is 5.64, in addition to a spouse, for a total of 6.64 dependents. For ease of understanding and calculation, this has been rounded up to seven: RAID individual interviews, 11 former KMT workers, Luilu, Kolwezi area (22 and 23 October 2018); RAID and AFREWATCH individual interviews, 18 former KMT workers, Kolwezi (3 and 4 April 2019); RAID and AFREWATCH individual interviews, 136 former KMT workers, Luilu, Kolwezi area (5, 6 and 7 April 2019), and RAID and AFREWATCH individual interviews, 10 former KMT workers, Kolwezi (8 April 2019).

* Pseudonyms were used throughout the report to keep identities confidential and to ensure interviewees' safety.

mining, despite his frailty. His income was cut in half. He was ejected from his home and had to move to cheaper accommodation. All he could afford was a basic structure without a roof or a door. He struggled to send his six children to school or to pay for healthcare when needed. Details of the hardships he faced echoed those of many of the former workers interviewed by RAID and AFREWATCH.

- *Impact on health and malnutrition*

A survey conducted by First Quantum in 2004 as part of the social baseline study for communities living around the KMT mine found that average per capita income was less than \$1 per day. The main source of income was agriculture, followed by artisanal mining.¹⁸⁷

Employment opportunities at the KMT mine were intended to help raise local income levels. As evidenced by the testimonies of the 175 former workers interviewed by RAID and AFREWATCH, workers felt the reliable salaries from the KMT mine prior to the KMT mine's closure in September 2009, while not high, were sufficient to provide for them and their dependents.¹⁸⁸ First Quantum's exit in 2009 and ERG's nine-year delay in re-launching activities dramatically affected the goal of improving local income and pulling families out of poverty.

The impact on health and the loss of health benefits was repeatedly mentioned by former workers as a major impact of the loss of their jobs. As one former worker said:

“We often fall ill now because we are undernourished. We have intestinal worms. I have chest pain, but I cannot afford medicine. My wife has serious stomach aches. She stays in bed all day. We should go to the doctor, but we don't have enough money to pay for it”.¹⁸⁹

When forced to turn to artisanal mining or subsistence farming, the former workers explained how they often do not earn enough to afford regular meals. “It happens often that I or my family don't eat for the entire day. It might happen on average three days a week”¹⁹⁰, explained a former worker. Many reported being more prone to illnesses as a consequence. “The children are always sick now”, one former worker said in an interview, “they only eat once a day. I cannot afford more. Maybe it explains why they are always sick”.¹⁹¹

Another worker described his wife condition “During KMT time, we were eating well. We were used to a good life at home. My wife is now at the hospital. She's been there for 6 weeks. She has stomach aches and blood pressure problems. They say it is because of malnutrition”.¹⁹²

¹⁸⁷ First Quantum Minerals Ltd, 'Annex D: Community Development Plan' (n 49) D.11.

¹⁸⁸ RAID individual interviews, 11 former KMT workers, Luilu, Kolwezi area (22 and 23 October 2018); RAID and AFREWATCH individual interviews, 18 former KMT workers, Kolwezi (3 and 4 April 2019); RAID and AFREWATCH individual interviews, 136 former KMT workers, Luilu, Kolwezi area (5, 6 and 7 April 2019), and; RAID and AFREWATCH individual interviews, 10 former KMT workers, Kolwezi (8 April 2019).

¹⁸⁹ RAID individual interview, former KMT worker, Kolwezi (4 April 2019).

¹⁹⁰ RAID individual interview, former KMT worker, Luilu, Kolwezi area (7 April 2019).

¹⁹¹ RAID individual interview, former KMT worker, Luilu, Kolwezi area (7 April 2019).

¹⁹² RAID individual interview, former KMT worker, Kolwezi (3 April 2019).

- *Impact on education*

Employment at the KMT mine also provided workers with sufficient income to pay their children's school tuition fees, according to former workers interviewed by RAID and AFREWATCH.¹⁹³ The loss of employment severely affected their children's education, with many former workers explaining that they had to withdraw some or all of their children from school for short or extended periods of time. Alain*, a father of ten, said he had no choice but to rotate school attendance between his children since he could no longer afford the \$5 per child each month for school fees.

Another former worker said:

“I don't earn much now, less than with KMT. I always tell myself that if I still had my job at KMT, I would be much better. Only one of my children go to school. The others can't go – they have to take turns to attend school. Some years it's them, the other years it's the others”.¹⁹⁴

Curtailing school attendance was one of the first sacrifices former workers and their families were forced to make following the closure of the KMT mine. Marie, a single mother of eight, described her struggle to keep her children in school:

“All my kids were attending school during KMT time. It was a good time; they were all going. However, they had to stop in 2012. I can only afford to pay for my three children in primary school. I have to prioritise. The ones that don't go to school stay at home”.¹⁹⁵

Another former worker said:

“My children all attended school when I was working for KMT. After I got dismissed, maybe 3 months, as we still had a little bit of money aside. After that, they were all expelled because I couldn't pay their tuition fees. I started farming in 2011, but it was barely enough to survive – I only have a small plot of land and no fertiliser. The children are still not going to school”.¹⁹⁶

Of the 175 former workers interviewed by RAID and AFREWATCH, the majority said the education of children had been negatively affected.

iii. Loss of employee benefits

KMT workers terminated in September 2009 also immediately lost access to the additional employment-related benefits provided by First Quantum via their sub-contractors. This included free health screening, healthcare services, as well as treatment and support for those living with HIV/AIDS.¹⁹⁷ According to the Project Documents, First

¹⁹³ RAID individual interviews, 11 former KMT workers, Lulu (22 and 23 October 2018); RAID and AFREWATCH individual interviews, 18 former KMT workers, Kolwezi (3 and 4 April 2019); RAID and AFREWATCH individual interviews, 136 former KMT workers, Lulu, Kolwezi area (5, 6 and 7 April 2019), and; RAID and AFREWATCH individual interviews, 10 former KMT workers, Kolwezi (8 April 2019).

¹⁹⁴ RAID individual interview, former KMT worker, Lulu, Kolwezi area (5 April 2019).

¹⁹⁵ RAID individual interview, former KMT worker, Kolwezi (3 April 2019).

¹⁹⁶ RAID individual interview, former KMT worker, Kolwezi (3 April 2019).

¹⁹⁷ First Quantum Minerals Ltd, 'Annex A: Labour and Human Resources Plan, Workplace Health and Safety Plan and Community and Safety Plan' (n 50) A.12 and A.24; First Quantum Minerals Ltd, 'Chapter 3: Project Description' (n 89) pts 3.45-3.46.

Quantum's HIV/AIDS programme had an annual endowment of \$100,000.¹⁹⁸ The programme for affected employees and their spouses included orientation sessions in HIV/AIDS, free treatment of opportunistic infections, antiretroviral treatment, positive living training and support¹⁹⁹ and pediatric care for HIV/AIDS afflicted children in First Quantum supported clinics.²⁰⁰ A community HIV/AIDS programme had also been initiated in Kolwezi, involving the "training of 71 peer educators, free condom distribution and the showing of awareness-raising films in core villages".²⁰¹

Free healthcare is particularly valuable in an environment of scarce medical resources. Too often a worker's spouse or child succumbed to their symptoms before the family had time to gather enough money to pay for appropriate treatment, as he was the case for Victor:

"One of my children got sick and died before I had time to collect enough money to pay for the hospital. I succeeded to gather enough for a little bit of medicine but not to bring him to the hospital. He died in 2017. Another of my sons was an artisanal miner because he couldn't find a job and he died in a landslide. I lost two children now. I have four sons alive - they are all artisanal miners".²⁰²

For others, it was the sudden halting of ongoing treatment paid for by First Quantum that affected them the most. For example, Steve*, a father of six, operated heavy and extremely noisy machinery while working at the KMT mine. He was monitored and treated by a doctor to help mitigate any adverse effects on his hearing. A couple of years after he was laid-off due to the mine's abrupt closure, he lost his hearing due to a lack of proper medical attention.²⁰³

Augustine* became a widow a few years after her husband lost his job at the KMT mine. He had a heart condition for which he had received regular medical treatment while employed at KMT. After he was laid off, he found another job, but it did not cover medical fees. He died a few years later while working, leaving Augustine with ten young children. Unemployed, she struggled to feed her children. All of her children stopped attending school since she was unable to afford their tuition fees. Her three eldest children were forced to become artisanal miners, to earn a meagre income to support the family.²⁰⁴

Accounts of untreated illnesses and death were common amongst the former KMT workers interviewed by RAID and AFREWATCH.

Young children appeared to be particularly affected by the loss of a parent's employment. Many former workers interviewed by RAID and AFREWATCH described having lost a child to malaria following the closure of the KMT mine because they could no longer afford the medical care.

¹⁹⁸ First Quantum Minerals Ltd, 'Chapter 3: Project Description' (n 89) pts 3.45-3.46.

¹⁹⁹ First Quantum Minerals Ltd, 'Chapter 3: Project Description' (n 89); First Quantum Minerals Ltd, *KMT Environment and Social Impact Assessment (ESIA)* (n 65); First Quantum Minerals Ltd, *KMT Final Environmental and Social Management Plan (ESMP)* (n 46).

²⁰⁰ International Finance Corporation (IFC), 'Environmental and Social Review Summary'.

²⁰¹ *ibid.*

²⁰² RAID individual interview, former KMT worker, Luilu, Kolwezi area (5 April 2019).

²⁰³ RAID individual interview, former KMT worker, Luilu, Kolwezi area (7 April 2019).

²⁰⁴ RAID individual interview, former KMT worker, Kolwezi (3 April 2019).

One of them is Jean-Paul*, whose four-year-old son died of malaria. He waited two days before bringing him to the clinic because he lacked the money to pay for the treatment. When he saw that his son's case was very serious, he urgently took him in, but it was too late. His son died on arrival at the hospital. He admitted,

“If I was still registered with a hospital through [my benefits with] KMT, I would have brought him sooner. Maybe he wouldn't have died”.²⁰⁵

“If I was still registered with a hospital through [my benefits with] KMT, I would have brought him sooner. Maybe he wouldn't have died”

- A former KMT worker

Another former worker, Pascal*, lost his three-year-old son in 2013 to malaria because he did not have enough money to afford prompt treatment. Pascal said:

“[My son's] name was Dieudonné*, he was a little boy. He started to have a fever. I brought him to the little health clinic, and they told me it was malaria. They asked me [to pay]. I was looking for money to get him treated, but it took me too long. He died at the clinic without receiving treatment”.²⁰⁶

Paulin's four-year-old son, Kamola*, also died of malaria while his father was trying to gather the \$75 for medical treatment requested by the clinic.²⁰⁷

KMT's forced departure due to the “DRC Corruption Scheme” also deprived its workers of something at least equal in value to income: access to free healthcare for them and their immediate families. The consequences were devastating.

B. Legal Efforts in DRC

Some former workers tried to seek legal remedy in Congo through the Employment tribunal. A group of 20 former workers who had retained their employment after the closure of the mine sought compensation from the sub-contractor, Chekina S.a.r.l., through which they had secured their positions. The workers claim is based on the lack of compensation offered to them following the loss of their jobs. As required by the Congolese labour law, the dispute first entered into mediation, which was unsuccessful. The former workers and their lawyers have since pursued the case to court but are still awaiting a trial date.²⁰⁸

Another group of 256 former workers, including the 20 employees mentioned above, also filed an official complaint in 2018 requesting KMT's new owner, ERG, to reinstate them in their former jobs. The case failed at the mediation stage and has yet to be heard by a court.

²⁰⁵ RAID individual interview, former KMT worker, Luilu, Kolwezi area (6 April 2019).

²⁰⁶ RAID individual interview, former KMT worker, Luilu, Kolwezi area (6 April 2019).

²⁰⁷ RAID individual interview, former KMT worker, Luilu, Kolwezi area (6 April 2019).

²⁰⁸ RAID interviews, local lawyers, Kolwezi (23 October 2018, 31 Mars 2019 and 16 October 2019).

How Congolese Victims were identified

A. The Document Trail

Critical to identifying the Congolese victims of the “DRC Corruption Scheme” and the harm they suffered is the document trail. The harm suffered by Congolese residents can be measured against publicly available development plans and baseline surveys (the Project Documents)²⁰⁹ produced by First Quantum and requested by IFC.

In order for First Quantum to secure IFC investment, it was required to prepare and implement specific social and environmental measures for local communities living on or near the KMT mine, based on baseline studies and surveys. The expected benefits were clearly articulated and measurable in the Project Documents. These documents not only identify the expected beneficiaries of the KMT project but also stipulate which benefits they were meant to receive. First Quantum was delivering these commitments, to an agreed timetable, when the KMT mine was suddenly forced to close.

The Project Documents provide a clear baseline by which to measure progress on social, environmental and health programmes for former workers and affected Congolese residents *before* and *after* the stripping of First Quantum’s KMT mining licence.

B. Near completion of the KMT construction phase

In September 2009, when First Quantum’s KMT mining licence was stripped, the project’s social and environmental commitments were either being implemented or were time-tabled for rollout.²¹⁰ Additional social and environmental benefits were due once the project entered its operational phase, due to start in 2010. One former worker described the state of the project to RAID and AFREWATCH:

*“We built the whole site. Before it was only bush, just trees and bushes. We gave our heart and sweat to build the mine. It was 90% completed when they sacked us. When ENRC arrived, everything was already done for them”.*²¹¹

According to First Quantum, the KMT project was 75% complete and had been scheduled to begin the operational phase in the first part of 2010.²¹² The near completion of the

²⁰⁹ All available at <https://disclosures.ifc.org/#/projectDetail/ESRS/24920>.

²¹⁰ Some were scheduled for implementation on completion of the construction phase and commencement of the operational phase. For example, the Final Action Plan provides for air quality monitoring and the implementation of Artisanal Miners Management Measures only once operations begin, and the Revised Environment and Social Management Plan provides for a nursery and trials for re-vegetation only during the operation phase: First Quantum Minerals Ltd, ‘KMT Final Action Plan’; First Quantum Minerals Ltd, ‘Revision of Table 3.2 of the ESMP’ (n 46).

²¹¹ RAID individual interview, former KMT worker, Luliu, Kolwezi area (23 October 2018).

²¹² First Quantum Minerals Ltd Written evidence - Working Effectively in Fragile and Conflict-Affected States: DRC and Rwanda (n 43) para 2.4.1.

construction was confirmed by the considerable investment of \$593 million First Quantum injected in the KMT mine.²¹³

The advanced state of construction of the KMT mine and its imminent opening was also reflected in the progress on the community development projects, many of which were being implemented before the KMT mine was forced to close,²¹⁴ while others were time-tabled.²¹⁵ As a result of IFC's strict oversight and its important investment in the KMT project, the roll-out of these development projects was much more than simple promises, they were firm commitments required by a key investor. Consequently, both time-tabled and ongoing social development programmes should be regarded as if they would have been implemented, but for the "DRC Corruption Scheme", which halted these projects overnight.

C. Causal links

After losing the KMT mine, First Quantum and other investors began legal action. In January 2012, ENRC agreed to acquire First Quantum's residual Congolese mining assets, including those in respect of the KMT mine, and "to settle all current legal matters".²¹⁶ ENRC agreed to pay a total consideration of \$1.25 billion to First Quantum, IFC and other



²¹³ In its 2009 Annual Report, First Quantum reported almost \$400 million in capital expenditures for its KMT project alone: First Quantum Mineral Ltd, Annual Report 2009. In later written evidence submitted to the House of Commons Select Committee on International Development in May 2011, First Quantum stated that it had invested \$593 million for the initial phase of the Kolwezi project, including the construction of the plant: First Quantum Minerals Ltd, Written evidence - Working Effectively in Fragile and Conflict-Affected States: DRC and Rwanda (n 43) para 2.4.1.

²¹⁴ For example, the Final Action Plan provides for surface water sampling by the end April 2009 and the implementation of the Community Health and Safety Plan prior to operations, and the Community Development Plan provides for the establishment of the Public Liaison Committee by March 2008 and the schedule of the first cycle of project implementation by the KMT foundation by the fourth quarter of 2009: First Quantum Minerals Ltd, 'KMT Final Action Plan'; First Quantum Minerals Ltd, 'Annex D: Community Development Plan' (n 49).

²¹⁵ For example, according to the Final Action Plan, First Quantum had to finalise and implement the Community Health Plan prior to commencement of operations as a condition for subsequent disbursement of funds from IFC. Further, First Quantum had to complete its Environmental and Social Management System procedures related to the construction phase by mid-May 2009, and the remaining procedures prior to operations: First Quantum Minerals Ltd, 'KMT Final Action Plan' ; First Quantum Minerals Ltd, *KMT Final Environmental and Social Management Plan (ESMP)* (n 46); First Quantum Minerals Ltd, 'Annex D: Community Development Plan' (n 49) pt 8.

²¹⁶ Eurasian Natural Resources Corporation PLC, 'Agreement signed with First Quantum Minerals Ltd. to acquire their residual assets and settle all claims in relation to their Democratic Republic of Congo operations' (5 January 2012) <<https://www.investigate.co.uk/eurasian-natural-res--enrc-/rns/acquisition-and-legal-settlement/201201051227400633V/>> accessed 20 January 2020.

investors.²¹⁷ ENRC informed RAID it acquired all of First Quantum's assets in Congo as part of the settlement.

As reported by the *Financial Times*, the “particular scrutiny” that followed ENRC’s acquisition of the KMT mine likely contributed to ENRC delisting from the London Stock Exchange in scandal in November 2013.²¹⁸ The London delisting required a private buy-out by the company’s major shareholders and removed access to investment capital. Combined with the hefty payment made to First Quantum, this put significant pressure on ENRC’s finances and subsequently on its ability to continue construction and development of the KMT mine.

ENRC, renamed ERG, is itself of the view that allegations of corruption materially damaged the company’s investment prospects. In response to a question from RAID about whether it had been challenging to find financing following the corruption allegations against ENRC, ERG responded, “It became more challenging to secure financing following the corruption allegations against ENRC and, in particular, the launch of the SFO’s investigation into that company”.²¹⁹ [ERG’s full answer can be read at Annex 1]. In March 2019, ENRC commenced legal action against the SFO for damages caused by its ongoing criminal investigation. The company is seeking damages in excess of \$93 million (£70 million).²²⁰

For nearly nine years, ERG left the KMT mine and the local communities abandoned. One resident of nearby Samukong village said, “there was absolutely no activity at the mine...No one was there or ever came to visit us in the interim period”.²²¹ In September 2015, ERG stated it was re-commencing construction at the KMT mine²²² with an announcement of an agreement with China Non-Ferrous Metal Industry’s Foreign Engineering and Construction

²¹⁷ Settlement available at <https://www.mines-rdc.cd/resourcecontracts/contract/ocds-591adf-6622537612/view#/>.

²¹⁸ James Wilson, ‘ENRC Listing Saga a Debacle of Corporate Governance’ *Financial Times* (27 August 2013)

<<https://www.ft.com/content/7b8716a6-0ef7-11e3-ae66-00144feabdc0>> accessed 7 January 2020. Its delisting followed earlier reports in June 2011 of two independent board members being voted off the company’s board for raising concerns about governance, see Garry White, Rowena Manson and Amanda Andrews, ‘ENRC “More Soviet than City”, Says Ousted Board Member Ken Olisa’ (9 June 2011) <<https://www.telegraph.co.uk/finance/newsbysector/epic/enrc/8564697/ENRC-more-Soviet-than-City-says-ousted-board-member-Ken-Olisa.html>> accessed 7 January 2020. Further evidence of the reasons for its delisting include the publication of a leaked Suspicious Activity Report in May/June 2012, see ‘Mining Copper, Burying Truth’ *100Reporters* (28 May 2012) <<https://100r.org/2012/05/mining-copper-burying-truth/>> accessed 7 January 2020 and press reports in April 2013 about a leaked letter from ENRC’s law firm, Dechert LLP, which had been conducting an internal “self-reporting” investigation to the SFO, see Garside (n 28).

²¹⁹ ERG response stated that “some \$700 million in financing was secured in 2015 for the purposes of developing the Metalkol RTR project”. It is pertinent to note that securing this investment occurred some five years after ENRC acquired KMT and that, although an agreement in principle was reached in September 2015 with Chinese financiers and China Nonferrous Metal Industry’s Foreign Engineering and Construction Co., Ltd. (NFC), the actual recommencement of construction did not begin until almost a year and a half later in the first quarter of 2017. See ‘Metalkol RTR (The Roan Tailings Reclamation Project).’ (*Eurasian Resources Group (ERG)*)

<<https://www.eurasianresources.lu/en/pages/bdp/metalkol-rtr-the-roan-tailings-reclamation-project>> accessed 7 January 2020; ‘Eurasian Resources Group Enters into a Principal Agreement with China’s NFC to Complete the Construction of Its Project in Africa; EXIM and ICBC to Support the Financing, Sinasure to Provide the Insurance’ (*Eurasian Resources Group (ERG)*, 9 February 2015)

<<https://www.eurasianresources.lu/en/news/eurasian-resources-group-enters-into-a-principal-agreement>> accessed 7 January 2020; see also NFC’s press releases: ‘NFC Signs EPC Contract of DRC RTR Project NFC’ (*China Nonferrous Metal Industry’s Foreign Engineering and Construction Co., Ltd. (NFC)*, 8 July 2016)

<http://www.nfc.com.cn/templates/en_T_new_list2/index.aspx?nodeid=93&page=ContentPage&contentid=3837> accessed 7 January 2020; ‘DRC RTR Project 10 Million LTI-FREE HOURS Achievement_NFC’ (*China Nonferrous Metal Industry’s Foreign Engineering and Construction Co., Ltd. (NFC)*, 3 July 2018)

<http://www.nfc.com.cn/templates/en_T_new_list2/index.aspx?nodeid=93&page=ContentPage&contentid=4161> accessed 7 January 2020.

²²⁰ Barney Thompson, ‘Mining Group ENRC Sues SFO for £70m over Corruption Probe’ *Financial Times* (26 March 2019)

<<https://www.ft.com/content/8e9cc1f4-4fe3-11e9-b401-8d9ef1626294>> accessed 8 January 2020.

²²¹ RAID interview, resident of Samukonga, Samukonga village, Kolwezi area (28 October 2018).

²²² See Eurasian Resources Group S.a.r.l. (ERG), ‘Sustainable Development Review 2015’ (2015)

<https://www.erg.kz/files/2015_Group_Sustainable_Development_Report_ENG.pdf>; ‘Metalkol RTR (The Roan Tailings Reclamation Project).’ (n 219).

Co. Ltd (NFC) to finish construction of the project.²²³ However, a later press release by NFC confirmed that it started construction of the project in February 2017.²²⁴ A small number of development projects for local communities were re-launched in late 2017, others began in 2018.²²⁵ To date, most of the social commitments made by First Quantum have not been realised.

The nine years of inactivity at the KMT mine, with no realisation or advancement of the social and environmental benefits that had been committed to by First Quantum, are directly linked to the “DRC Corruption Scheme” and the impact it had on the financial constraints faced by ENRC and its ERG successor.

When ERG acquired the KMT project it was silent about whether it would continue the social and environmental commitments made by First Quantum and IFC. Only belatedly, in 2017, did ERG say in its Sustainability Report that it had “implemented a new Safety, Health, Environment and Communities (SHEC) Policy, which is aligned with the International Finance Corporation (IFC) Performance Standards”²²⁶ for the KMT project. The company gave no timeline by which those standards would be met.

ERG’s pledge to align its policies with IFC Performance Standards only amounts to good-faith promises. There is no enforcement, monitoring, oversight or sanction if these policies are not implemented, as was the case under First Quantum. Having suffered nine years of abandoned community projects, local residents now also face a loss of the structures and guarantees that IFC’s participation had brought to the project.

During a meeting with RAID in May 2019, ERG officials said they were not adopting the prior First Quantum and IFC environment, social and community development plans.²²⁷ ERG officials emphasised that they were focused on implementing sustainable development projects and that they viewed a number of the projects committed to by First Quantum as “paternalistic” and “unsustainable”.

Even if ERG were to re-launch every programme undertaken or committed to by First Quantum (which it has not done) it could not repair almost a decade of halted development.

²²³ see ‘Eurasian Resources Group Enters into a Principal Agreement with China’s NFC to Complete the Construction of Its Project in Africa; EXIM and ICBC to Support the Financing, Sinosure to Provide the Insurance’ (n 219).

²²⁴ see, ‘NFC Signs EPC Contract of DRC RTR Project_NFC’ (n 218); ‘DRC RTR Project 10 Million LTI-FREE HOURS Achievement_NFC’ (n 219).

²²⁵ According to local residents interviewed by RAID and AFREWATCH during their field visits, and confirmed by ERG, see ERG’s answer letter, dated 14 June 2019, Annex 1 and Eurasian Resources Group S.a.r.l. (ERG), ‘Sustainable Development Report 2017’ (2017) <https://www.erg.kz/files/29685_ERG_Sustainability_Report_2017_ENG_Interactive.pdf>; Eurasian Resources Group S.a.r.l. (ERG), ‘Sustainable Development Report 2018’ (2018) <https://www.erg.kz/files/2015_Group_Sustainable_Development_Report_ENG.pdf>.

²²⁶ Eurasian Resources Group S.a.r.l. (ERG), ‘Sustainable Development Report 2017’ (n 225).

²²⁷ RAID interview, meeting with ERG officials and CEO, Amsterdam, The Netherlands (14 May 2019) and RAID interview, meeting with Metalkol Corporate Social Responsibility team, Metalkol site, Kolwezi area (12 April 2019).

Broadening the View of Victims of Corruption

The perception that “corruption is a victimless crime” is losing credibility, but that does not mean that all victims of corruption are being recognised. Any notion that corruption has no impact on people in their daily lives could not be further from the truth, as this report shows. 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 last case, the reduction in public revenue stunts economic growth and erodes the provision of public services. The general public is therefore considered as the single victim of corruption²²⁸ and “since everyone might be a victim (i.e. society) no one is perceived a victim”.²²⁹ 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.

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.²³⁰ 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”.²³¹ The World Bank also recognises that corruption has a disproportionate impact on the poor and most vulnerable.²³² 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”.²³³

²²⁸ United Nations Office on Drugs and Crime, *The Global Programme Against Corruption UN Anti-Corruption Toolkit* (2nd edn, 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.

²²⁹ Anita Ramasastry, ‘Is There a Right to Be Free from Corruption?’ (2015) 49 UC Davis Law Review 703, available at https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Ramasastry.pdf.

²³⁰ The *United Nations Convention against Corruption* (UNCAC), article 35.

²³¹ 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>>.

²³² ‘Combating Corruption’ (*World Bank*, 4 October 2018) <<https://www.worldbank.org/en/topic/governance/brief/anti-corruption>> accessed 7 January 2020.

²³³ ‘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>> accessed 7 January 2020.

In the UK context, the Compensation Principles appear to allow for a range of victims of corruption. The principles state that “victims could include affected states, organisations and individuals” although a more detailed definition of victims remains absent. Guidance to implement the principles has yet to be published by the government.

Overseas corruption cases concluded by the SFO between 2015 and 2019 illustrate that there are some nascent attempts to compensate victims, although the practice to date shows that the conception of the state as victim still predominates. Of the £33 million levied on companies for compensation in overseas corruption cases between 2015 and 2019, 80 per cent was allocated directly to host States where the corruption occurred. While some interesting workarounds were used to allocate funds to minimise the risk of re-corruption – such as in the case of *Smith and Ouzman*,²³⁴ in which the UK government provided seven ambulances to the Kenyan government – the State has remained the main recipient.

UK authorities will need to rethink who are the real victims and what social, environmental and economic harm has been caused to them if the Compensation Principles are to be at all meaningful. This necessitates looking beyond the state as the victim, especially in cases where senior government officials may have been involved in the corruption, as is the case in the “DRC Corruption Scheme” detailed in this report (see box below). Compensation cannot or should not be directed at States if there is a high risk of re-corruption by senior state officials. Even at the investigation stage, as in the ENRC case, the SFO ought to actively consider possible victims beyond the State. What is required, including in the UK, is a more systematic approach through which community-level victims are recognised and compensated, either through the courts in contested cases or under comprehensive deferred prosecution agreements.

A. Risk of Designating the State as the Victim

In the case of the KMT mine, the Congolese state should not be viewed as a victim of corruption due to the crucial participation of the most senior Congolese officials in the “DRC Corruption Scheme”. This included former President Joseph Kabila and senior presidential advisor, Katumba Mwanke, who operated alongside Gertler to illicitly and personally benefit from Congo’s immense riches.

Kabila and his entourage have a long history of kleptocracy. Following his rise to power in 2001, Kabila and his family amassed an immense fortune through their stakes in more than 80 companies, according to research published by Congo Research Group.²³⁵ The influential Africa Progress Panel, chaired by former UN Secretary-general Kofi Annan, calculated the loss to Congo.²³⁶ Between 2010 and 2012, during Kabila’s presidency, at least \$1.36 billion in revenues were lost from the under-pricing of its mining assets sold by the government to offshore companies, many of which were linked to Gertler.

²³⁴ *R v Smith & Ouzman & Others* (2016), Crown Court at Southwark.

²³⁵ Congo Research Group (CRG), ‘All the President’s Wealth: The Kabila Family Business’ (*Congo Research Group | Groupe d’Étude Sur le Congo*, 19 July 2017) <<http://congoresearchgroup.org/all-the-presidents-wealth/>> accessed 7 January 2020.

²³⁶ Africa Progress Panel (n 19).

Even though Kabila stepped down from the presidency in 2019, his hold on power remains significant.²³⁷ He continues to head of the largest political party in Congo, whose members control the National Assembly, the Senate and 22 of the country's 26 provinces. Kabila loyalists hold nearly three-quarters of the ministerial positions in government, including the Ministry of Finance, and exercise control over Gécamines, Congo's state-owned copper and cobalt company. Because of Kabila's hold on power, any attempts by the new president Felix Tshisekedi to tackle corruption are likely to face stiff resistance.²³⁸

Designating the Congolese state as a victim of the "DRC Corruption Scheme" is therefore extremely risky.

B. Existing Legal Tools can help

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 crime²³⁹, 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",²⁴⁰ all of which could apply to the type of harms suffered by local communities and former workers around the KMT mine in Congo.

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".²⁴¹ 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. In order for the impact of a crime to be fully

²³⁷ Stanys Bujakera, 'New Congo Government Shows Influence of Former President' *Reuters* (26 August 2019)

<<https://uk.reuters.com/article/uk-congo-politics-idUKKCN1VG0FG>> accessed 7 January 2020.

²³⁸ 'In the Congo, Waiting for an Anti-Graft Drive That Never Comes' (*Stratfor*, 16 September 2019)

<<https://worldview.stratfor.com/article/congo-waiting-anti-graft-drive-never-comes-kabila-tshisekedi-mining-corruption>> accessed 7 January 2020.

²³⁹ '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>> accessed 7 January 2020.

²⁴⁰ 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>>.

²⁴¹ 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>>.

acknowledged, victims ought to be given a voice early on in the proceedings, starting at the investigation stage. Both the Code of Practice for Victims of Crime²⁴² and the SFO's commitment to Victims and witnesses²⁴³ grant victims access to services and support before, during and after an investigation, and should also apply to victims of overseas corruption.

Acknowledging the full harm of corruption will introduce a human focus. It will also lead to an understanding that the anti-corruption sphere does not operate in isolation but is very much linked to the protection of human rights.

C. Linking Corruption and Human Rights Violations

It is broadly accepted that corruption undermines the full realisation of human rights.²⁴⁴ 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”.²⁴⁵

This report argues that there is significant overlap between both realms and that adopting a victim-centred approach in the anti-corruption agenda has significant advantages. When a framework centred on victims is applied to corruption, it is immediately apparent that many of the harms suffered are also human rights violations.²⁴⁶ By being more aware of the broader human rights harms caused by corruption, people, states and companies may be more likely to support efforts to tackle it.

The connection between corruption and human rights harms is evident in the case of the victims of the “DRC Corruption Scheme”. The harms caused by corruption to those living on or near the KMT mine, as described in this report, are all simultaneously human rights violations. The forced closure of the mine led to an abrupt end of vital community development projects and caused specific harms, each with an attendant right:

- The continued pollution of the environment (right to a clean and healthy environment)²⁴⁷;
- The lack of access to potable water (right to drinkable water and an adequate standard of living)²⁴⁸;

²⁴² 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>.

²⁴³ ‘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/>> accessed 7 January 2020.

²⁴⁴ 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/HRCCaseAgainstCorruption.aspx>> accessed 7 January 2020, 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”.

²⁴⁵ Morten Koch Andersen, ‘Why Corruption Matters in Human Rights’ (2018) 10 *Journal of Human Rights Practice* 179.

²⁴⁶ 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/>> accessed 7 January 2020.

²⁴⁷ 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>> accessed 7 January 2020.

²⁴⁸ In 2010, the United Nations General Assembly explicitly recognised the human 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

- The lack of access to basic education (right to education)²⁴⁹;
- The lack of access to basic healthcare services (right to health)²⁵⁰;
- The sudden loss of jobs (right to work)²⁵¹.

When a human rights framework is applied to anti-corruption efforts, it helps to shift the emphasis to both victims *and* the perpetrators and provides a better understanding of the practical connection between corruption and human rights.²⁵²

Undoubtedly, more work is needed, for example, to better understand the nexus between business and the state when it comes to combatting overseas corruption and where responsibilities to respect, protect and provide remedy for human rights violations lie.²⁵³ Consideration could, for example, be given to whether the *UN Guiding Principles on Business and Human Rights* (UNGPs)²⁵⁴ are useful in helping to bridge the gap between the corruption and human rights agendas. Likewise, the *OECD Guidelines for Multinational Enterprises*²⁵⁵ contain provisions on both human rights and corruption, but much more consideration could be given to how non-compliance in one realm reinforces non-compliance in the other.

In fact, the UK government office responsible for implementing the Guidelines considered a complaint against ENRC, but solely in respect of human rights provisions, as these relate to problems of water supply, social provision and community engagement at another of the company's concessions in Congo. In early 2016, the office found that:

ENRC [had] not met the obligation to address human rights impacts with which it [was] involved" and had "not taken adequate steps to address

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/>> accessed 7 January 2020. 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 and defined 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 (SDGs) 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).

²⁴⁹ 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.

²⁵⁰ 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).

²⁵¹ The ICESCR recognises the right to work (art. 6) and describing it as "the right to be able to work, allowing him/her to live in dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community". See also General Comment No. 18: The Right to Work 2005 (E/C12/GC/186). Not only the forced closure directly violated the right to work to everyone working on the concession, but it also indirectly undermined their right to an adequate standard of living, which includes "adequate food, clothing and housing, and to the continuous improvement of living conditions"(Art. 11.1 ICESCR). See also General Comment No. 12: The Right to Adequate Food 1999 (E/C12/1999/5).

²⁵² Julio Bacio-Terracino, 'Linking Corruption and Human Rights' (2010) 104 Proceedings of the Annual Meeting (American Society of International Law) 243, 245, mentioning that it will assist "states and other public authorities to respect, protect and fulfill their human rights responsibilities at every level".

²⁵³ UN Working Group on Business and Human Rights, 'Preliminary Concept Note: Connecting Business and Human Rights with Anti-Corruption' <<https://www.ohchr.org/Documents/Issues/Business/WGCorruptionBHR.pdf>>.

²⁵⁴ The United Nations Guiding Principles on Business and Human Rights (UNGPs), available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

²⁵⁵ The OECD Guidelines for Multinational Enterprises (2011), available at <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

impacts on the communities that arise from delays in taking forward its mining projects.²⁵⁶

The complaint did not make any allegations of corruption against ENRC and no consideration was given to, or findings made about, any provision from the chapter of the Guidelines on combatting bribery.

²⁵⁶ UK National Contact Point for, the OECD Guidelines for and UK National Contact Point for the OECD Guidelines for Multinational Enterprises, 'RAID & ENRC: Final Statement After Examination of Complaint' p. 4
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/846978/BIS-16-156-raid-and-enrc-final-statement-after-complaint.pdf>.

ERG's New Programmes at the KMT Mine (renamed Metalkol RTR)

ERG has not re-started First Quantum's community programmes except for the provision of clean water and the resettlement of Samukonga. When ERG re-launched its activities at the KMT mine in 2017, it initiated a process of Participatory Rural Appraisals (PRAs), for local communities to decide on their priorities for investment. Local residents interviewed by RAID and AFREWATCH said their priorities had changed little over the past decade.²⁵⁷ Since the KMT mine was forced to close in September 2009, the local population living in and around the mine has increased.

In 2018, ERG built 10 wells in 9 of the villages near to the KMT Mine.²⁵⁸ In villages with larger populations, such as UCK village, a single borehole was insufficient. In a meeting with RAID in May 2019, ERG officials said they planned to drill 11 more wells,²⁵⁹ but at the time of publication, this commitment had not yet been realised. The company said that "[f]urther water requirements will be supported through the community development committee" that is due to established under the new mining law.²⁶⁰ It has not yet been established. Access to clean drinking water remains a serious challenge for local communities living near to the KMT mine.

ERG officials also told RAID they were intent on developing sustainable development programmes and that they are designing a large agricultural support programme for the communities. This had not yet been implemented at the time of publication. Going forward, ERG says it will rely on the community development committee to be established under Congo's new mining law to help it determine other development projects.²⁶¹ As mentioned above, such a committee has not yet been created.

In 2018, ERG donated \$1 million to the nuns of the Good Shepherd Mission, an international development foundation.²⁶² The funds are supporting its Alternative Livelihood Programme in Kolwezi. According to ERG, "The goal of this programme is to help break the cycle of violence and abuse against children and women in artisanal mining communities and improve their living conditions".²⁶³ In 2018, ERG also agreed to support a programme to keep children out of mines in Northern Kolwezi run by PACT, another international development organisation.²⁶⁴ In contrast to First Quantum, ERG has not

²⁵⁷ RAID interviews, Kamimbi village, Tshala village, Samukonga village (new location), Samukinda village, UCK, Tshamudende, Lulu, Kashala village, Kipepa village, Kolwezi area (18 October-7 November 2018; 28 March-18 April 2019; 14-29 October 2019).

²⁵⁸ *ibid.*

²⁵⁹ See ERG's answer letter, dated 14 June 2019, Annex 1, question 26.

²⁶⁰ *ibid.*, p.7.

²⁶¹ *ibid.*, and ERG's answer letter, dated 15 January 2020, Annex 1.

²⁶² *ibid.*, p.2 for more details see ERG's answer letter, dated 15 January 2020.

²⁶³ Eurasian Resources Group S.a.r.l. (ERG), 'Eurasian Resources Group Partners with the Good Shepherd Sisters to Support the Bon Pasteur Alternative Livelihood Programme' (19 January 2017) <<https://www.eurasianresources.lu/en/news/eurasian-resources-group-partners-with-the-good-shepherd-si>> accessed 7 January 2020.

²⁶⁴ See ERG's answer letter, dated 14 June 2019, and answer letter dated 15 January 2020, Annex 1.

planned on building new schools, or supporting existing ones, in the villages near to the KMT mine.

Despite these well-intentioned programmes of support, very few specifically target the residents living near the KMT mine.

ERG said it was not planning to re-launch the malaria prevention programme started by First Quantum, despite how the disease causing high infant mortality. In written correspondence, ERG said it “is contributing to the Malaria Awareness Campaign and other health sensitisation undertaken by the Kazenze Health Zone (Cholera, Malaria, vaccination campaigns) and will continue to support the work in relation to Malaria in the local area”.²⁶⁵ The Kazenze Health Zone is an administrative centre serving a large area, including the villages near to the KMT mine. ERG’s financial support assists in buying medicine to be distributed by the health zone to local health clinics but doesn’t involve spraying homes or the distribution of mosquito nets,²⁶⁶ programmes which previously appeared to have important health benefits (see above). Medical staff interviewed by RAID and AFREWATCH said that the impact of ERG’s financial support was minimal.²⁶⁷

ERG referred to having invested a total amount of approximately \$2.2 million in sustainable development programmes at its Metalkol concession between 1 January 2017 and 31 December 2018 and plans on continuing investment in 2020.²⁶⁸

In response to a RAID question about the high dust levels in communities near the KMT mine, ERG said in correspondence that it was regularly monitoring the dust levels and the quality of the water in the communities living in or around its concession.²⁶⁹ On dust levels, the company said that it was adhering to South African guidelines since the Congolese government had not set any levels, and that the “parameters analysed are in line with the standards” of “less than 600 mg/m²/day on a 30 day average for residential areas”. No information about the frequency of the monitoring nor the results of the testing were provided, despite RAID having requested copies of the results on multiple occasions. In response to RAID’s question about whether the results were being shared with local communities, ERG said that “in the coming 3 months, the dust and other monitoring equipment will be explained and shown to the community”.²⁷⁰ During a field visit in October 2019, none of the Congolese residents interviewed by RAID and AFREWATCH had yet received any information about dust levels.²⁷¹

Further, in December 2018, ERG launched its Clean Cobalt Framework, which comprises a suite of commitments that aims “to embed responsible business practices” into their operations and to “ensure that [Metalkol’s] cobalt is produced responsibly and to address risks associated with human rights infringements and unethical business practices, in

²⁶⁵ *ibid.*

²⁶⁶ AFREWATCH interview, personnel of the Kazenze Health zone centre, Kolwezi area (5 May 2019) and RAID interview, Kazenze medical staff, Kolwezi area (23 October 2019).

²⁶⁷ AFREWATCH interview, personnel of the Kazenze Health zone centre, Kolwezi area (5 May 2019) and RAID interview, Kazenze medical staff, Kolwezi area (23 October 2019) and RAID interviews, staff at the Kamimbi clinic, Kamimbi village, Kolwezi area (11 April 2019).

²⁶⁸ For more details on ERG’s investments and plans, see ERG’s answer letter, dated 15 January 2020, Annex 1.

²⁶⁹ See ERG’s answer letter, dated 14 June 2019, Annex 1, pp. 5-6.

²⁷⁰ See ERG’s answer letter, dated 14 June 2019, Annex 1, p. 6.

²⁷¹ RAID field visits, Kamimbi village, Tshala village, Samukonga village (new location), Samukinda village, UCK, Tshamudende, Luilu, Kashala village, Kipepa village, Kolwezi area (14-29 October 2019).

particular child labour".²⁷² The Framework contains a number of commitments, including a traceable supply chain which ought to ensure no child labour, cobalt that is not sourced from artisanal and small scale (ASM) mining, restoring the environment and promoting sustainable development. ERG published a performance report in July 2019, stating it was in compliance with all of these commitments.²⁷³

While this framework is a good first step towards enhancing good business practices, questions over implementation and the long-term monitoring of the Framework remain unanswered. Its real impact on local communities around the concessions cannot yet be discerned. ERG is also a member of the United Nations Global Compact and has undertaken to implement its ten Principles.²⁷⁴

ERG has developed internal policies to ensure compliance with anti-corruption and anti-bribery laws and to compel their suppliers to comply with them through its Supplier Code of Conduct.²⁷⁵ During a meeting with RAID in May 2019, ERG's CEO said that the transition from ENRC to ERG had not been "smooth", and that a complete change of management was made during the transition.²⁷⁶ He stressed that in his view, ERG was a completely different entity from ENRC.²⁷⁷

²⁷² Eurasian Resources Group S.a.r.l. (ERG), 'ERG Clean Cobalt Framework: Our Commitment to Responsible Production', available at <https://eurasianresources.lu/uploads/1/files/ERG%20Clean%20Cobalt%20Framework.pdf>.

²⁷³ Eurasian Resources Group S.a.r.l. (ERG), 'Metalkol RTR Clean Cobalt Performance Report' <https://www.ergafrica.com/wp-content/uploads/Metalkol-Clean-Cobalt-Performance-Report_July-2019.pdf>. The six commitments assessed are: (1) being compliant with the OECD Due Diligence Guidance; (2) its cobalt is sourced without child labour; (3) having traceable cobalt through its supply chain; (4) its cobalt is not sourced from artisanal and small scale (ASM) mining; (5) restoring the environment; and (6) collaborating to promote sustainable development.

²⁷⁴ See ERG's answer letter, dated 15 January 2020, p. 1. Annex 1. For the UN Global Compact's ten Principles, see: <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

²⁷⁵ ERG mentioned in its Code of Conduct having an Anti-Bribery and Corruption Policy, International Economic Sanctions Compliance Policy, Anti-Money Laundering Policy, Agency Compliance Policy, Anti-Trust and Competition Law Compliance Policy: Eurasian Resources Group S.a.r.l. (ERG), 'ERG Code of Conduct' p. 10 <https://www.eurasianresources.lu/uploads/1/files/1.%20CoC%20ERG%20June%202018_ENG_For%20CoC%20course.pdf> and Metalkol has its own Anti-Bribery and Anti-Corruption Policy, Gift and Entertainment Policy, Agents Compliance Policy, CSR Projects and Sponsorship Policy, Conflict of Interest Policy and Anti-Fraud Policy, as mentioned in Metalkol's Supplier Code of Conduct: Eurasian Resources Group S.a.r.l. (ERG), 'Metalkol RTR Supplier Code of Conduct' p. 2 <<https://www.ergafrica.com/wp-content/uploads/2018/10/Supplier-Code-of-Conduct-Metalkol.pdf>>. See also Eurasian Resources Group S.a.r.l. (ERG), 'ERG Clean Cobalt Framework: Our Commitment to Responsible Production' (n 272) p. 13.

²⁷⁶ RAID interview, meeting with ERG officials and CEO, Amsterdam, The Netherlands (14 May 2019).

²⁷⁷ *ibid.*

Conclusion

Misconceptions that either an abstract state is the victim of corruption or else corruption is a “victimless crime” must be debunked. The victims of corruption are numerous; they are real people suffering specific harms in their daily lives. The report’s findings demonstrate that corruption impacts individuals, local communities, workers and organisations, many of whom will have had no commercial involvement with the corrupt actors. None of these possibilities should be discarded based on a narrow conception of who is and who is not a victim of corruption. Recognising a diversity of victims will inevitably lead to a reconsideration of the harms caused by corruption that to go beyond financial loss to the State, shareholders or business competitors. Corruption causes social, environmental, economic and even cultural harm, hitting the poorest and most vulnerable hardest. Such recognition is a crucial first step on the road to ensuring that those affected are compensated.

The Compensation Principles are an important tool to ensure the victims of corruption are identified and compensated. They not only commit UK law enforcement authorities to using whatever legal mechanisms are available to secure compensation, but also to recognising that organisations and individuals can be affected by corruption. The Compensation Principles need to interpret harm in a comprehensive and broad manner to ensure including the type of harm and victims described in this report.

The Congolese communities living near to the KMT mine know better than anyone the devastating consequences of corruption. This report serves to bring their lived experiences to a wider audience including judicial authorities pursuing the perpetrators of corruption. The principle to provide compensation to those worst-affected by corruption should be grounded in the reality of these victims of corruption and acted upon. The global fight against corruption risks becoming futile if there were no remedy for the victims, like those in Congo, who suffer the most harm.

ACKNOWLEDGEMENTS

Geneviève Thériault-Lachance, Legal and Policy Researcher at RAID, was the lead researcher and author of this report. Richard Ilunga Mukena, Director of Human Rights Programmes at AFREWATCH and Céline Tshinate Tshizena, Director of Advocacy Programmes at AFREWATCH, contributed to the research and helped conduct interviews and visits to the numerous sites and villages. This report was reviewed and edited by Anneke Van Woudenberg, Executive Director at RAID and Michael Elliot, Legal and Policy Researcher at RAID. Sophie Haggerty, former Communications and Research Assistant at RAID, helped prepare the report for publication. RAID is deeply grateful to all the individuals and organisations who contributed to this report, including: Rupert Cowper-Coles, Senior Associate at RPC, who provided legal libel review of the report and the accompanying multimedia pieces; John Emerson who designed the map and table; Fiona Lloyd-Davies, owner of Studio 9 Films, who with the help of Kristen Ahmad-Gawel, produced the accompanying multimedia pieces; Benoit Nyemba who conducted the filming; and Sarah Leblois who translated the report into French.

Most importantly, RAID wishes to thank all the Congolese people who helped make this report possible by meeting with us and sharing their stories. We greatly appreciated the warm welcome and the openness shown by customary chiefs, local residents, Congolese non-governmental organisations and lawyers working with local communities and former workers.

Supported in part by a grant from the Open Society Foundations.

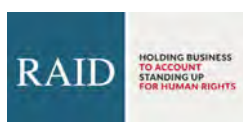
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Design of Report Cover, Executive Summary, Recommendations and back page by Mathilde Gaillard, at Hamak.

For more information, please visit our website: <http://www.raid-uk.org>.

RAID | JANUARY 2020



Annex 1

From: [REDACTED]

Date: Wednesday, 22 [REDACTED]

Cc: [REDACTED]

Subject: Follow-up questions from [REDACTED]

Dear Benedikt, Katrina and Loes,

I am circling back to you following our meeting last week. We agreed to follow-up with written questions on matters you were unable to fully answer during our meeting or where you needed to verify information. Please find attached the list of questions.

As agreed, the answers to these questions and the discussions we held in Amsterdam last week will together comprise the on-the-record response to RAID's questions. If there are inconsistencies or conflicting information between the oral responses and the written responses, we will take the written responses as definitive.

Thank you so much for agreeing to provide answers in writing. We look forward to receiving your response.

With my best regards,

Anneke

Anneke Van Woudenberg

Executive Director

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Questions From RAID to ERG in follow up to 14 May 2019

During our meeting, we discussed the number of Congolese residents living near the Metalkol concession affected by the mine's activities. We said that based on figures provided to us by local chiefs and administrators, that the total number was estimated between 44,000 and 115,000. In our calculation we include Kashala, Samukonga, Kamimbi, Samukinda, UCK, Kipepa, Tshamudenda and Tshala. Our questions are as follows:

1. In relation to the Metalkol concession, which villages around the concession does ERG designate as "primary" affected and which ones are "secondary"?
2. What population figures does ERG have for each of the primary and secondary villages? If there is a seasonal variance, what is it?
3. What figure does ERG use for calculations of its social programme (the higher seasonal number, the permanent population, an average or other)?

We discussed employment at Metalkol and employment benefits for those living in the affected villages. You said ERG is applying ILO labour standards and that an estimated 793 Congolese people were employed, though the headcount once the mine is up and running will be less. You indicated that an estimated 94% of Congolese staff were hired through sub-contractors. Our questions are as follows:

4. Please could you confirm the total number of employees at Metalkol as of May 2019? How many are Congolese? How many are expatriates?
5. Of the total employees, how many are on short-term (21 day) contracts and how many are full-time?
6. Of the Congolese workers, how many employees are from the affected villages near to the mine (either primary or secondary villages)? Based on what we discussed, you have in your database addresses of employees which should permit you to extract this figure. Please break down the numbers employed in the affected villages between short-term contracts and full-time contracts.
7. What benefits, if any, are provided to the company's Congolese employees? We would be grateful if you could provide a copy of an anonymized standard employment contract?
8. We did not fully understand the distinction ERG is making between brokers and sub-contractors. Could you please describe the distinction you make?
10. Of the total Congolese employees, how many are employed directly by ERG and how many are employed by subcontractors/brokers? Which sub-contracting companies do you use for employment?
11. What do you anticipate the running number of employees will be by end of 2019, once the construction is completed? How many of these will Congolese versus expatriates?

We discussed ERG's grievance mechanism and how it functioned. Our questions in relation to the grievance mechanism are as follows:

12. When did ERG launch its grievance mechanism at its concessions in DRC? Is the same grievance mechanism being used at all concessions?
13. Do you believe ERG's grievance mechanism is compliant with the UNGPs?
14. Since its launch, how many grievances by category and by concession (grievances, requests, demands and complaints) has ERG received? What percentage of the grievances were initially received by phone?
15. What is the average delay in answering the grievance? Were complainants concerns resolved through dialogue or unilaterally decided by the company? How many were accepted and resolved (delivered)? For complaints that were accepted, what type of remedy was provided? How many are pending? How many were refused? On what basis were the grievances refused?
16. Are those who receive a remedy asked or required to sign a legal waiver or other similar agreements?

We discussed the significant dust problem emanating from three sources – the dust emanating from the road, the dust emanating from Metalkol's tailings, and dust emanating from other tailings. You told us that dust levels are measured regularly against DRC guidelines and are reported to national authorities. You did not have the results of those measurements to hand, but said you could provide these. We would be grateful to receive them. Our questions are as follows:

18. In which locations around the Metalkol concessions are dust levels measured? Please indicate villages and the number of locations where measurements are being taken in each.
19. What are the results of the dust levels for the past 12 months? Which laboratory produces the results? What are the results for PM₁₀ and PM_{2.5}? How does this compare to previous years? Can you provide measurements for previous years?
20. What other substances are being measured? For example, is ERG measuring mineral/metal traces in the dust (for example cobalt, zinc, thorium or others)? If so what are the levels?
21. What are the DRC dust level guidelines against which ERG is measuring? Where can we find those? Is ERG measuring against WHO dust level guidelines as well?
22. Are the results of the dust levels reported back to communities? If so, how?
23. You mentioned dangerous dust particles emanating from Gecamine tailings near to UCK? Are the dangerous particles of zinc and thorium being picked up in dust measurements? If yes, what are the levels?

We discussed the pollution of the Musonoi River and the minimal access to clean drinking water for residents living near the Metalkol concession. You told us that an additional 19 wells would

be installed as part of the community development programme and that you were applying WHO guidelines of 20 litres per person per day. Our questions are as follows:

24. Please could you share the results of any water testing on the Musonoi River conducted by ERG. Where and when was the water tested? How does this compare to previous measurements, such as those collected by First Quantum?
25. To date, ERG has installed 7 water wells for residents of nearby villages. What is the water capacity at each of these wells?
26. Where and when does ERG plan to install the additional 19 wells? What will be the water capacity of these wells?
27. Are there any further plans for additional wells?
28. Is ERG measuring the effect of mining activity on the level of the water table? If yes, how has it been impacted?

We discussed the steps ERG has taken to combat corruption and transparency. We requested information about the purchase of the remaining stake in Metalkol that ERG purchases in 2016. You indicated this had been made public by Gecamines in a recent report and that questions related to ENRC would need to be checked with legal counsel. Our questions are as follows:

29. Can you confirm the amount paid for the Gecamines and SIMCO shares in Metalkol in 2016. Was this reported in EITI reports?
30. We are slightly confused as to why the Gecamines accounts show a negative payment of 17 million to ERG – could you explain this?
31. It is reported that ENRC paid \$1.25 billion in the out-of-court settlement between First Quantum and the Congolese government in 2012. Do you have you any comment on the involvement of ENRC in this settlement?
32. You mentioned during our meeting that ERG turned to Chinese investors to develop Metalkol. Could you comment on whether it was challenging to find financing following the corruption allegations against ENRC?
33. Please could you provide further clarification on the royalties and taxes that ERG pays to the DRC government and/or Gecamines or other parties?

You told us that human rights and ensuring strong relations with the community were important to your efforts and we touched on the Clean Cobalt Framework that ERG is implementing at Metalkol. Our questions are as follows:

34. Please could you provide further details on Metalkol's Human Rights Working Group, its remit, how often it meets and its impact.
35. You mentioned that the ABC and human rights standards clauses are inserted into contracts with subcontractors and suppliers. Could we have a copy (the wording will do) that is inserted?
36. Please could you provide more details on Metalkol's Counter Party Due Diligence (CPDD) process.

We raised a number of concerns with you. We will not list them fully here, but on a number of matters you said you would look into it and get back to us with further information. These are as follows:

38. We informed you that according to residents of Kashala and Kipepa, an ERG official had recently told them not to use the river water as it was polluted. In light of this information, residents requested barrels in order to soak their manioc for consumption, an activity that was previously done in the river. ERG accepted the request for the residents of Kipepa and agreed to provide 10 barrels (not the 54 initially requested), but ERG refused a similar request from the neighbouring residents of Kashala. According to information RAID collected in April, the barrels that had been promised had not yet been delivered. We would be grateful to know why and on what basis one request was granted, but the other rejected, and when you anticipate the barrels being delivered. Please also could you inform us what other steps are being taken to support the villages with their water needs in light of the information from an ERG official not to use the river water.
39. We informed you that residents of Kipepa said that they had been informed to build bricks so that ERG could assist them in building a health clinic and a school. We understand that ERG no longer plans to build a school or clinic there, but has not informed local residents. You said you would look into this. We would be grateful to know what has occurred.
40. We informed you that female residents in a number of the villages were complaining of gynaecological problems, including vaginitis, which they attributed to having to bath in the polluted river water. We indicated that this could be a problem women did not feel comfortable raising with male community liaison workers, but that it might be a matter worth looking into, including whether it is linked to polluted water and if medications to assist women could be made available through the health zone.
41. We asked why the malaria program of distribution of bed nets, lotions and spraying conducted by First Quantum had been halted. You indicated it was not sustainable, but it wasn't clear if ERG had looked into the effectiveness of the programme and the reported drop in infant mortality. You indicated there were other concerns with spraying. You said you would look into what had happened and get back to us on why it had been halted.

Thank you very much for the documents you have already provided. We would be very grateful to receive the following documents as well which were referred to in our discussion or in the Clean Cobalt Framework. They are as follows:

- ESIA
- The final third party report on the performance and the assurance opinion on the Clean Cobalt Framework. We understood from our meeting that this would be completed shortly and be public.
- Report(s) on the results of the Participatory Rural Appraisal (PRA)
- Metalkol's Human Rights Risk Matrix (referred to in Clean Cobalt Framework)

- Management plans developed to mitigate and monitor environmental and social impacts identified in the ESIA (referred to in Clean Cobalt Framework)
- In Metalkol's Supplier Code of Conduct you provided to us, it is mentioned that suppliers need to comply with ERG's Anti-Bribery and Anti-Corruption Policy, Gift and Entertainment Policy, Agents Compliance Policy, CSR Projects and Sponsorship Policy, Conflict of Interest Policy and Anti-Fraud Policy. We would be grateful for copies of those policies as well.
- Stakeholder and ASM Engagement Plan (referred to in Clean Cobalt Framework)
- Written procedures on how the ERG grievance mechanism works and operates.

14 June 2019

Ms Anneke van Woudenberg
Executive Director
RAID

By email: woudena@raid-uk.org

ERG



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Dear Ms Woudenberg,

Re: Meeting with ERG

Thank you for meeting with our CEO and other ERG representatives on 14 May 2019 to discuss various matters relating to ERG's sustainability practices. A key part of ERG's business is to ensure that we have in place sustainable community development practices in order to ensure that our surrounding communities benefit from our operations.

We were pleased that we were able to have a constructive dialogue on a number of topics and to hear your observations and comments from RAID's fieldwork. We welcome the feedback and have been following up on your questions and comments.

We have previously provided you with a number of documents that are public, and have attached a number of other documents referred to in this letter. Other documents are confidential. We are prepared to provide further documents provided you confirm that these documents would be kept confidential and not distributed further without our consent.

As discussed, in December 2018, the Clean Cobalt Framework was launched at Metalkol RTR (a copy of which is attached). The Framework will help to further embed responsible business practices in what is a sensitive operating environment. Furthermore, it will support the ongoing efforts to comply with – and go beyond – the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals ('OECD Guidance').

Metalkol RTR has set out the specific application of the OECD Guidance in its Human Rights Statement of Commitment, which summarises the salient risks and sets out the governance structure and approach to respecting human rights and the manner in which the entity will achieve this. A Human Rights Working Group was established in 2018 to oversee the implementation of the Clean Cobalt Framework and the Human Rights Statement of Commitment (further details are provided below).

We have also developed and are implementing a communication plan to proactively communicate with our staff, contractors, suppliers and community stakeholders. This includes the initiation of employee, supplier, contractor and community meetings, prominently displayed posters in all relevant languages and distribution of copies of relevant documents to employees, suppliers and contractors.

We support a range of community development initiatives to improve the lives of local communities near Metalkol RTR in line with the Clean Cobalt goals. This includes a particular focus on helping children and adolescents transition out of ASM and strengthening the capacity of local communities to address this important challenge. Some examples include:

The Good Shepherd International Foundation: ERG continues to support a three-year partnership with the Good Shepherd International Foundation and Bon Pasteur, which aims to help improve living conditions in local communities, especially for women

and children. First launched in 2017, ERG has pledged more than US\$1 million to support the programme. In 2018:

- We provided funding to support the Good Shepherd team in the construction of a child protection centre in Kolwezi. The centre, which is scheduled for completion in 2019, aims to offer the only source of free education to local primary and secondary school children. It will be managed by the Foundation, with plans to accommodate 15 primary and 15 secondary school classes. This forms part of a holistic programme aimed at supporting children involved in ASM activities. The programme also provides skills training for girls and women as well as agricultural capacity building to support economic empowerment and alternative livelihoods

- We continued to support the Bon Pasteur Alternative Livelihood programme near Metalkol RTR in Kolwezi, which is run by the Good Shepherd International Foundation. This programme focuses on supporting children involved in artisanal mining activities, including through the delivery of an educational programme and the provision of food during working hours. It also aims to improve food security and income generating opportunities for local communities through support for alternative livelihoods, with a particular focus on capacity building for young women. In 2018 and early 2019, the initiative also contributed to i) the protection of 1,929 children from the worst forms of child labour, including ASM activity; 2) the training of 182 girls and 64 women to help them access the labour market; and 3) 281 women gaining alternative livelihood skills and improving their income.

'Children Out of Mining – Northern Kolwezi' programme: In 2018, ERG also agreed to support a major one-year partnership with international development organisation and co-founding member of the Global Battery Alliance, PACT. The programme aims to raise awareness and strengthen child protection through a range of tailored capacity-building programmes in communities near Metalkol RTR. The programme also aims to directly support miners aged between 15 and 17 (who are typically the most financially dependent on income from ASM) through a six-month vocational training programme and apprenticeships, accompanied by short-term remuneration to help them transition into alternative employment.

In 2018, PwC carried out a gap analysis of Metalkol RTR's existing practices against the Clean Cobalt Framework (and associated international best practice), followed by a 'pre-audit' assessment. These helped identify areas for further improvement with respect to – for example – procedures around the capture, recording and follow-up of issues raised during stakeholder engagement, as well as the grievance mechanisms. PwC will provide their independent ISAE 3000 limited assurance report on this Performance Report in respect of the activities undertaken by Metalkol RTR as of March 1st 2019 to demonstrate compliance with the Clean Cobalt Framework. This assurance statement will also be published and we will provide you with a copy.

Responses to specific queries

We set out below our responses to the queries raised at the meeting. We will continue to inquire from the communities about some of the potential issues and concerns raised by RAID. We have logged all the matters you raised in our grievance system to ensure that these are included as part of our continuing community engagement process.

1. *In relation to the Metalkol concession, which villages around the concession does ERG designate as "primary" affected and which ones are "secondary"?*

The 2018 Golder Associate ESIA identifies 12 communities in and around the concession.

- o Primary impacted communities:
Samukonga, Samukinda, Kipep, Kashala and Kamimbi,
- o Secondary impacted communities:
Tshala, Tshamundenda, Kanyembo, Kisangama, Ndanzama, Lulu and UZK.

2. *What population figures does ERG have for each of the primary and secondary villages? If there is a seasonal variance, what is it?*

The latest available numbers were provided to you during your visit to Metalkol. We base the numbers on the official government data. It should be noted that there are regular fluctuations of the amount of inhabitants in the villages and this impacts the ability to accurately record population numbers.

3. *What figure does ERG use for calculations of its social programme (the higher seasonal number, the permanent population, an average or other)?*

As per Question 2.

4. *Please could you confirm the total number of employees at Metalkol as of May 2019? How many are Congolese? How many are expatriates?*

As noted in our discussions, the Metalkol operation is still under construction and accordingly Metalkol RTR has employees in relation to the project construction and the operations.

As at May 2019, Metalkol employees are:

Nationals: 894

Expatriates: 88 employees

Total: 982.

The total employees employed by subcontractors are:

Operations: 1184

Project construction: 1026

Total: 2210 – of these, 1753 are Congolese nationals.

5. *Of the total employees, how many are on short-term (21 day) contracts and how many are full-time?*

None of the above Metalkol employees are on short term contracts. From time to time Metalkol RTR employs short term workers on a fixed term contract through a local employment broker. This number fluctuates over time as these are not permanent roles. They include grass cutting, fencing, temporary increases in camp administration, occasional cleaning of the plant and similar short term projects.

6. *Of the Congolese workers, how many employees are from the affected villages near to the mine (either primary or secondary villages)? Based on what we discussed, you have in your database addresses of employees which should permit you to extract this figure. Please break down the numbers employed in the affected villages between short-term contracts and full-time contracts.*

As of May 2019, 226 permanent full-time Metalkol employees lived in the primary or secondary impacted villages. During 2018, Metalkol employed 1887 local employees through major subcontractors who have activities on site.

In relation to short term workers, see above. As we move into operations, we will continue to implement our local content management plan.

7. *What benefits, if any, are provided to the company's Congolese employees? We would be grateful if you could provide a copy of an anonymized standard employment contract?*

Permanent Congolese employees receive the following: school fees allowance, housing allowance, medical treatment for the family, family allowance, transport allowance and funeral allowance.

8. *We did not fully understand the distinction ERG is making between brokers and sub-contractors. Could you please describe the distinction you make?*

Labour brokers are used to source local employees for roles. Metalkol has phased out the use of labour brokers for permanent roles for nationals. Subcontractors are suppliers and contractors who provide goods and services to Metalkol. Key subcontractors include NFC (project construction), IFS (provision of catering and camp services) and AGS (security services). Subcontractors provide specialised services and people at the site, a labour broker sources people.

10. *Of the total Congolese employees, how many are employed directly by ERG and how many are employed by subcontractors/brokers? Which sub-contracting companies do you use for employment?*

As at May 2019, Metalkol employs 894 Congolese nationals directly. Subcontractors employ a total of 1753 nationals.

11. *What do you anticipate the running number of employees will be by end of 2019, once the construction is completed? How many of these will Congolese versus expatriates?*

The running number of employees once the construction is completed will be between 950-1000 and the number of expatriate employees will be in accordance with the applicable DRC legislation.

12. *When did ERG launch its grievance mechanism at its concessions in DRC? Is the same grievance mechanism being used at all concessions?*

Grievance mechanisms were formalised across ERGA sites in 2015 and the first ERGA-wide procedure was rolled out in 2017, with an update in 2018.

A third-party external review was undertaken in 2017 and incorporated in the 2018 ERGA procedure.

Metalkol updated its grievance mechanism in 2018 by conducting additional stakeholder engagement and engaging Monkey Forest Consulting to ensure the Metalkol social management system, including the grievance mechanism, is in line with IFC Performance Standards and the UN Guiding Principles on Business and Human Rights.

Any comments on the procedures will be considered as part of our continuous improvement process.

13. *Do you believe ERG's grievance mechanism is compliant with the UNGPs?*

Yes. At Metalkol in 2018, we engaged Monkey Forest Consulting to ensure the social management system and plans, including the grievance mechanism, are aligned with IFC Performance Standards and UN Guiding Principles on Business and Human Rights.

In December 2018, the Clean Cobalt Framework was launched at Metalkol RTR. The framework will help to embed responsible business practices in what is a sensitive operating environment. Furthermore, it will support the ongoing efforts to comply with – and go beyond – the OECD Guidance. The grievance mechanism forms part of these business practices and has been reviewed by third parties, including PwC as part of the Clean Cobalt Framework assurance.

14. *Since its launch, how many grievances by category and by concession (grievances, requests, demands and complaints) has ERG received? What percentage of the grievances were initially received by phone?*

In the DRC in 2018, a total of 76 grievances were raised by local community members, which primarily related to compensation disputes, labour and property damage. A total

of 67 of these were closed out, with the remaining nine requiring additional follow-up action.

No significant grievances were raised through the grievance mechanism established at the Samukonga resettlement village near Metalkol RTR in the DRC (i.e. any issues raised related to straightforward administrative issues concerning the facilities at the new village).

You raised the concern that, although the grievance phone number is well noted on the notice boards, people from the villages state that they are told not to phone the number. CSR employees assure that this must be a misunderstanding. During our community engagements, we will reinforce that the phone number can be used. When a concern is raised via telephone, it will be followed up by the CSR staff and put in writing in order to enable entry into our ISOMETRIX system and the timely management and resolution of grievances. We also ensure other ways are provided to raise a grievance such as directly approaching CSR staff during community liaison visits.

15. *What is the average delay in answering the grievance? Were complainants concerns resolved through dialogue or unilaterally decided by the company? How many were accepted and resolved (delivered)? For complaints that were accepted, what type of remedy was provided? How many are pending? How many were refused? On what basis were the grievances refused?*

The objective is to resolve grievances in a timely manner through the grievance mechanism. The grievance is investigated together with the group/person who has lodged the grievance. We try to come to a solution with dialogue and have a documented system to record the investigation and dialogue. If the group/person are not in agreement with the proposed resolution, they are free to access other alternatives, including through the legal system.

The resolution could involve compensation, provision of goods in kind, changes to mine processes or other remedies, depending on the circumstances. In terms of those grievances that are rejected, common reasons are:

- Requests that are for the provision of community support that do not comply with our policy and procedures with regards to community development and sustainable investment, and are not a grievance
- Request is not substantiated after investigation

In terms of timing and management of grievances, we have implemented the software program ISOMETRIX, which is developed around the plan – do – check - act system, similar to the ISO systems. It enables proper follow up of actions. At Metalkol, grievances and requests open for 10 days or longer will be raised in the management meetings to ensure timely responses to the community.

16. *Are those who receive a remedy asked or required to sign a legal waiver or other similar agreements?*

Metalkol has never asked for a legal waiver or similar through the grievance mechanism.

18. *In which locations around the Metalkol concessions are dust levels measured? Please indicate villages and the number of locations where measurements are being taken in each.*

The monitoring locations are as per the Air Quality Monitoring Plan described in the ESIA. Communities included are the UCK village, Lulu, Kamimbi, Kshala, Musonoi City, Samukinda, Samukonga village and Methodist church.

19. *What are the results of the dust levels for the past 12 months? Which laboratory produces the results? What are the results for PM₁₀ and PM_{2.5}? How does this compare to previous years? Can you provide measurements for previous years?*

Statutory environmental reporting is performed annually. The report follows the DRC legal framework.

Dust fall out levels are measured to the South African standards for residential areas. An internationally accredited laboratory for analysis of results is used.

20. *What other substances are being measured? For example, is ERG measuring mineral/metal traces in the dust (for example cobalt, zinc, thorium or others)? If so what are the levels?*

Parameters analysed are in line with the standards set out in Question 21 below.

21. *What are the DRC dust level guidelines against which ERG is measuring? Where can we find those? Is ERG measuring against WHO dust level guidelines as well?*

There have been no DRC standards identified so far in terms of dust level guidelines in the DRC mining legislation (Law No 007/2002 of July 11, 2002 as amended and complimented by Law No 18/001 of March 09, 2018 and Decree No 038/2003 of 26 March 2003 as amended and complemented by Decree No 18/024 of June 8, 2018) and in the DRC Law on the Environment in general (Law No 11/009 of July 9, 2011). However to address this gap, Metalkol applies SA standards which are less than 600 mg/m²/day on a 30 day average for residential areas. These standards are sourced from the SA GOVERNMENT GAZETTE No 41650 of 25 MAY 2018 & <http://www.iohsolutions.com/environmental-services/environmental-dust-fall-out/>

22. *Are the results of the dust levels reported back to communities? If so, how?*

During the community engagement in the coming 3 months, the dust and other monitoring equipment will be explained and shown to the community. Going forward, Metalkol will add this reporting as a standing agenda point for the CSR community meeting.

23. *You mentioned dangerous dust particles emanating from Gecamines' tailings near to UCK? Are the dangerous particles of zinc and thorium being picked up in dust measurements? If yes, what are the levels?*

Metalkol does not have a legal right to access another company's tailings and therefore does not specifically monitor these levels. We suggest that this point could be raised with Gecamines.

24. *Please could you share the results of any water testing on the Musonoi River conducted by ERG. Where and when was the water tested? How does this compare to previous measurements, such as those collected by First Quantum?*

Metalkol follows the Water Sampling Plan as described in the ESIA. The Musonoi River has a history of exceedances caused by the discharge of sewage from Kolwezi and surrounding villages, the uncontrolled discharge of household waste, ASM activities and discharges from other mining companies, which is confirmed in the baseline studies incorporated in the ESIA.

In general, for recent water quality monitoring results of surface water, we have seen exceedances of the DRC guideline values for effluents for suspended solids, iron and copper in water that enters the Musonoi river in our concession area and when it leaves Musonoi at the Kasobantu dam. This is in line with the baseline information obtained in the ESIA. The Metalkol operation does not pump water into the Musonoi River as part of its normal operations.

25. *To date, ERG has installed 7 water wells for residents of nearby villages. What is the water capacity at each of these wells?*

We currently have installed 10 solar water pumping stations. Consultants will be used to monitor and report on the functional details of the pumping stations in Q3, 2019.

26. *Where and when does ERG plan to install the additional 19 wells? What will be the water capacity of these wells?*

Metalkol RTR has 11 boreholes planned for 2019; the exact location of the boreholes will depend on the geophysics (i.e. location of water). The amount of available water will depend on the pump test yields that are performed after drilling. The intention is not to overdraw the aquifer in order to have a sustainable water yield over time.

| # | COMMUNITIES | Additional boreholes as envisaged for 2019 (EIMD Report) |
|---|--------------|--|
| 1 | GCM/UJK | 2 |
| 2 | Tshamundenda | 1 |
| 3 | Tshala | 3 |
| 4 | Kamimbi | 2 |
| 5 | Kamimbi II | 1 |
| 6 | Samukinda | 1 |
| 7 | Kipepa | |
| 8 | Kashala | |
| 9 | GCM /KOLWEZI | 1 |

27. *Are there any further plans for additional wells?*

Further water requirements will be supported through the community development committee that will be set up under the new mining law. Metalkol are basing needs on the WHO standard.

Metalkol RTR also intends to progressively increase access to water within all Metalkol RTR surrounding communities through the years while advocating for infrastructure improvement of impacted communities at the tripartite forum (Provincial government, civil societies, mining companies as per the new mining law on the redistribution of mining royalties and basket fund allocation).

28. *Is ERG measuring the effect of mining activity on the level of the water table? If yes, how has it been impacted?*

Water levels are measured and in line with baseline information.

29. *Can you confirm the amount paid for the Gecamines and SIMCO shares in Metalkol in 2016. Was this reported in EITI reports?*

ERG takes its legal and regulatory obligations seriously and it has complied with all applicable legal requirements in the DRC in respect of this transaction. It should be noted, however, that under DRC law (Decree n 011/23 dated 20 May 2011) it is for the Minister of Mines to declare any sales of state mining assets to a third party.

This transaction was reported in the 2016 EITI report. The EITI Report on State Portfolio Companies confirmed that Gecamines sold its shares in Metalkol to ERG for US\$170m.

Of this amount, the report states that US\$127,328,868 had been settled, leaving an outstanding balance of US\$42,671,132, as at the date of the report.¹

In relation to both the settled balance and the outstanding balance, the report gives the following clarifications from Gecamines:

- Of the outstanding balance, US\$42m related to the claim made on Metalkol and the remaining US\$671,132 related to banking charges;
- Concerning the settled balance, the difference between the amount declared by Gecamines to EITI DRC (US\$ 110m) and the amount actually settled (US\$127,328,868) related to advances of US\$17.3m received by Metalkol in 2015.

A paper subsequently published by Gecamines in 2018 confirmed that the transaction was finalised in two parts, and that the shares were sold to ERG. US\$110m was paid in 2016, as detailed in the 2016 EITI report, with the remaining balance settled in 2017.²

30. *We are slightly confused as to why the Gecamines accounts show a negative payment of 17 million to ERG – could you explain this?*

We are not in a position to comment upon the accounts of third parties.

31. *It is reported that ENRC paid \$1.25 billion in the out-of-court settlement between First Quantum and the Congolese government in 2012. Do you have you any comment on the involvement of ENRC in this settlement?*

We would refer you to press releases published by Eurasian Natural Resources Corporation PLC ("ENRC"), respectively, on 5 January 2012, which contain some considerable detail in relation to this settlement. We enclose this press release for your convenience.

32. *You mentioned during our meeting that ERG turned to Chinese investors to develop Metalkol. Could you comment on whether it was challenging to find financing following the corruption allegations against ENRC?*

It became more challenging to secure financing following the corruption allegations against ENRC and, in particular, the launch of the SFO's investigation into that company. However, notwithstanding those difficulties, ERG did in fact secure financing (albeit at far greater cost than would otherwise have been the case) from international partners. For example, some \$US 700 million in financing was secured in 2015 for the purposes of developing the Metalkol RTR project. In total, ERG has invested in excess of USD 1 bn in the construction of the Metalkol RTR project, in addition to the costs of acquisition.

33. *Please could you provide further clarification on the royalties and taxes that ERG pays to the DRC government and/or Gecamines or other parties?*

Further details in relation to payments to the DRC Government are set out in ERG's Sustainable Development Reports available here:

<https://eurasianresources.lu/en/pages/sustainable-development/sustainable-development-reports>.

34. *Please could you provide further details on Metalkol's Human Rights Working Group, its remit, how often it meets and its impact.*

Metalkol RTR has – in the context of its application of the OECD Guidance and UNGPs – established a Metalkol Human Rights Statement of Commitment. This sets out its salient risks and its approach towards respect for human rights, including associated governance structures.

¹ 2016 DRC EITI Report – Section 1.4 'Des relations financières entre les EP et l'Etat', Pages 11, 45, 46

² Gecamines Publication, November 2018 – 'The truth about the lies of NGOs in the Democratic Republic of Congo', Page 21

In 2018, a Human Rights Working Group was established to oversee the implementation of the Clean Cobalt Framework and the Human Rights Statement of Commitment. This Working Group is chaired by the General Manager of Metalkol RTR and is comprised of representatives from senior management in relevant departments. It is responsible for establishing and maintaining a Human Rights Risk Assessment and monitoring any changes to risk profiles, new risks and the progress of mitigation measures. The Working Group met 5 times during 2018 and a further 3 times to date in 2019 (as at May 2019).

35. *You mentioned that the ABC and human rights standards clauses are inserted into contracts with subcontractors and suppliers. Could we have a copy (the wording will do) that is inserted?*

We have previously provided you with this and a copy is attached. The standard terms are contained in the Metalkol standard terms and conditions. Additional or enhanced clauses are developed on a case by case basis for higher risk suppliers.

36. *Please could you provide more details on Metalkol's Counter Party Due Diligence (CPDD) process.*

CPDD reviews are conducted by dedicated and well-trained compliance managers across the Group, using reputable information providers and professional compliance databases. This allows us to assign risk ratings in each case and identify appropriate mitigation actions. Training is provided on the CPDD requirements. The reviews include questionnaires completed by the suppliers and other third parties covering all aspects of the compliance policies including anti-corruption, health, safety, environment and human rights.

Metalkol has also developed and implemented a Supplier Code of Conduct, which guides our approach to conducting business with suppliers and includes contractual clauses requiring adherence to the Supplier Code of Conduct and applicable policies, supplier due diligence and training. The audit of suppliers commenced in 2019.

In April 2019, Metalkol extended this CPDD process to potential cobalt customers to support downstream and value chain due diligence processes.

38. *We informed you that according to residents of Kashala and Kipepa, an ERG official had recently told them not to use the river water as it was polluted. In light of this information, residents requested barrels in order to soak their manioc for consumption, an activity that was previously done in the river. ERG accepted the request for the residents of Kipepa and agreed to provide 10 barrels (not the 54 initially requested), but ERG refused a similar request from the neighbouring residents of Kashala. According to information RAID collected in April, the barrels that had been promised had not yet been delivered. We would be grateful to know why and on what basis one request was granted, but the other rejected, and when you anticipate the barrels being delivered. Please also could you inform us what other steps are being taken to support the villages with their water needs in light of the information from an ERG official not to use the river water.*

To clarify, Samakonga village has already received a consignment of barrels following a grievance raised when the operation accidentally destroyed the existing barrels. Kipepa and Kashala have put in requests for barrels. Both requests have been accepted in principle and work was done with the communities to confirm the appropriate number of barrels according to households. Kipepa will receive 52 barrels and Kashala will receive 21 barrels. The order is in progress.

39. *We informed you that residents of Kipepa said that they had been informed to build bricks so that ERG could assist them in building a health clinic and a school. We understand that ERG no longer plans to build a school or clinic there, but has not informed local residents. You said you would look into this. We would be grateful to know what has occurred.*

We could not verify this complaint in Kipepa as the initial feedback has been that they have no bricks and have not been making bricks for any Metalkol community projects. During PRA sessions performed at Kipepa in 2017, inadequate infrastructure (educational and health) were amongst the concerns raised by the community, however Metalkol did not commit to building any clinics or schools.

40. *We informed you that female residents in a number of the villages were complaining of gynaecological problems, including vaginitis, which they attributed to having to bath in the polluted river water. We indicated that this could be a problem women did not feel comfortable raising with male community liaison workers, but that it might be a matter worth looking into, including whether it is linked to polluted water and if medications to assist women could be made available through the health zone.*

Medical clinics and the health zone authorities report no change in the occurrence of vaginitis. Metalkol RTR's female CSR employees will continue to ask women during the community engagements for the next three months in an attempt to get some more information. Please let us know if you have any further detail that you are able to share with us.

41. *We asked why the malaria program of distribution of bed nets, lotions and spraying conducted by First Quantum had been halted. You indicated it was not sustainable, but it wasn't clear if ERG had looked into the effectiveness of the programme and the reported drop in infant mortality. You indicated there were other concerns with spraying. You said you would look into what had happened and get back to us on why it had been halted.*

Metalkol is contributing to the Malaria Awareness Campaign and other health sensitisation undertaken by the Kansenze Health Zone (Cholera, Malaria, vaccination campaigns) and will continue to support the work in relation to Malaria in the local area.

Malaria is also one of the health topics discussed at Metalkol with employees. The intention of Metalkol is to keep its programmes sustainable and support the existing government health programmes through the community development committee that will be set up under the new mining law. We will raise Malaria as a potential programme with the committee.

Suggested follow up

We trust this has answered the questions raised during the meeting. As noted during the meeting, we would expect that if RAID were intending to publish any material relating to ERG, that it be provided to us for comment in advance of publication.

Finally, we would be pleased to welcome you to visit the programme work of the Good Shepherd Sisters/Bon Pasteur supported by ERG in Kolwezi, referred to above. I also wish you productive conversations with the Global Battery Alliance to learn about what we are seeking to do as a collective.

As discussed, it would be useful to arrange a follow up meeting to address further queries and we have been in contact with you separately in relation to availability.

Yours sincerely,



Katrina White

Head of Compliance International

Eurasian Resources Group S.á r.l.



Rights and Accountability in Development

26 July 2019

Katrina White
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1019 GM, The Netherlands
E: [REDACTED]

Via email

Dear Katrina,

Thank you for providing us with some of the ERG's publicly available documents following our meeting in Amsterdam, and for your letter dated 14 June 2019 responding to our written questions.

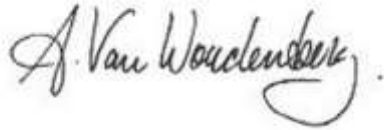
Thank you also for agreeing to provide answers in writing to any further queries from RAID. We have carefully reviewed the documents you have sent and the answers to our questions. Please find attached our comments and a list of further follow-up questions.

You mentioned in your letter other available documents that you would be willing to provide to us confidentially. As discussed at our meeting, we believe that engagement with civil society is best conducted in an open and transparent manner. In our view, conducting business responsibly requires transparency, especially as it relates to human rights, the environment, responsible sourcing and addressing concerns of local communities. The documents we have requested either underpin or relate directly to how ERG is implementing its Clean Cobalt Initiative and, as such, should not fall under any confidentiality provisions. I very much hope you will agree to share them with us openly.

We have also attached questions related to Frontier concession. Due to time constraints during our meeting in Amsterdam, we didn't have time to discuss certain concerns RAID has relating to other ERGR's concessions in the DRC. However, and as you are aware, RAID has conducted fieldwork in all ERG concessions, including Frontier. We would be grateful if you could answer these questions as well.

As mentioned in our meeting and in previous correspondence, we strive to reflect all perspectives in our research and publications in the interest of balanced and fair reporting. I can assure you that the views of ERG, as expressed during our face-to-face on-the-record meeting and in written correspondence, will be taken into account in RAID's forthcoming publications.

We would be happy to take up the offer of a further meeting with appropriate ERG's representatives to continue our dialogue. We look forward to receiving your response and available dates for a follow-up meeting. From our side, we are available to meet in Amsterdam during the week of September 9 -13 or the following week September 16-20. Do please let us know if these dates are convenient for you and/or your colleagues. Yours sincerely,

A handwritten signature in black ink that reads "A. Van Woudenberg". The signature is written in a cursive style with a large, looping initial 'A' and a trailing flourish.

Anneke Van Woudenberg Executive
Director

FOLLOW-UP QUESTIONS from RAID to ERG:

1. In relation to the documents we requested, please could you indicate on the list below which ones are confidential and why. If they are not confidential, we would be grateful if you could provide us with copies. Please note that many of the documents relate directly to human rights and/or environmental policies and hence underpin ERG's Clean Cobalt Framework. We further note that ERG (and specifically Metalkol RTR) is a member of the Cobalt Institute and has adopted the Cobalt Industry Responsible Assessment Framework (CIRAF), which has a strong public reporting requirement.
 - a. The 2018 Golder Associate ESIA, referred to in your answer letter dated 14 June 2019 at Questions 1, 18 and 24. The ESIA contains information necessary to answer these questions. It is not uncommon to make the ESIA public.¹
 - b. The 2018 gap analysis report by PwC and "pre-audit" assessment, mentioned in your answer letter dated 14 June 2019;
 - c. Report(s) on the results of the Participatory Rural Appraisal (PRA);
 - d. Written procedures and other materials governing the operation of the ERG grievance mechanism;
 - e. Report(s) produced by Monkey Forest Consulting as part of its engagement referenced in your answer letter dated 14 June 2019 at Questions 12 and 13;
 - f. Anonymised standard employment contract;

Documents referred to in the Clean Cobalt Framework. We believe that these documents should not be made confidential if they are part of the Clean Cobalt Framework:

- g. Metalkol's Human Rights Risk Matrix;
- h. Management plans developed to mitigate and monitor environmental and social impacts identified in the ESIA;
- i. Stakeholder and ASM Engagement Plan;

Policies referred to in Metalkol's Supplier Code of Conduct and/or its [compliance policies](#) webpage. Please note that these types of documents are usually on companies' website, but we have been unable to find them on ERG's site.

- j. ERG's Anti-Bribery and Anti-Corruption Policy;
- k. Gift and Entertainment Policy;
- l. Agents Compliance Policy;
- m. CSR Projects and Sponsorship Policy;

¹ As an example, see Energean's ESIA: <https://www.energean.com/sustainability/workplace-health-and-safety/esiaprinos-development/>

- n. Conflict of Interest Policy and Anti-Fraud Policy.
2. You set out which villages are designated by ERG as “primary” and “secondary”. We are surprised that Tshala and UCK are designated as “secondary” given their close location adjacent to Metalkol. Can you please explain:
 - a) The basis upon which these categories were established;
 - b) what criteria was applied.
 3. In your answer to question 2 about population figures for each of the villages, you referred us back to our visit to Metalkol. However, we did not receive that information during our visit, but were promised that the team in Kolwezi would get back to us. We followed up with an email to ERG Africa’s CSR team manager Luck Mumba, on 13 April 2019, but have yet to receive an answer. We would be grateful for answers to the following on population figures:
 - a) The population numbers ERG is using for each of the primary and secondary villages.
 - b) Any seasonal variance to the above.
 4. Can you identify the specific labour brokers Metalkol used during its construction phase?
 5. How many Congolese nationals were the labour brokers employing?
 6. We are confused by some of the employee figures your provided and would like to seek clarification. The current total number of those employed by Metalkol and subcontractors is 3,192 (your answer to previous Q.4), yet you give a year-end figure of 950-1000 employees (your answer to previous Q.11) once construction is complete.
 - a) Are over 2,000 employees still engaged in construction?
 - b) If yes, will their contracts come to an end when construction is finished? If yes, when will that be?
 7. You mentioned having received 76 grievances in the DRC in 2018:
 - a) Could you please break down the number of grievances per concession (Comide, Metalkol and Frontier)?For each concession, could you please:
 - b) describe the categories of grievances received (e.g. concerning resettlement, land disputes, access to water etc.)
 - c) provide a breakdown of the number of grievances according to each category.
 8. Do the 76 grievances include all requests received, or only those defined as grievances?

9. Out of the 76 grievances, how many were refused? Could you please breakdown those refused according to the bases for the refusal (e.g. concerning a harm that was not established to ERG's satisfaction, was found by ERG not to be its responsibility, etc).
10. Of the grievances that were not refused, please identify the steps that were taken to remediate the issues identified.
11. For each year, what is the average time taken to resolve a grievance?
12. You were asked about, have said during our meeting in Amsterdam that you would provide it to us, and then have not provided data on dust fall out. We note that you refer to using an internationally accredited laboratory for analysing the results of dust fall out levels measurement. Could you please provide:
 - a) the results of that measurement in relation to the dust fall out level around the Metalkol concession for the past 12 months?
 - b) how the levels compare to previous years?
13. You state that Metalkol applies SA [South African] standards which are less than 600 mg/m²/day on a 30-day average for residential areas.
 - a) Have these levels been exceeded?
 - b) If so:
 - i. when?
 - ii. in which locations?
 - iii. by how much?
 - iv. What steps were taken to reduce the levels?
14. Your reply states that the dust and other monitoring equipment will be explained to local communities.
 - a) Will you also share the results of the dust monitoring with local communities?
 - b) If yes, how will you ensure the significance and impact on the population's health is adequately explained to those communities?
 - c) If no, why not?
15. We note that you refer in your response to recent water quality monitoring results in relation to the Musonoi river, but do not provide those results. Could you please provide us with the results from the monitoring of the Musonoi river for the past 12 months?
16. We understand that you plan to install two new boreholes in Kamimbi, and a new one in Kamimbi II. Could you please explain the difference between Kamimbi and Kamimbi II?
17. Please could you clarify your reasoning why Kamimbi will receive more boreholes than UCK, despite having a smaller population?

18. You state that the water table level is measured and in line with baseline information. Can you please clarify:

- a. How has the water table been impacted by Metalkol's operations?
- b. What do you mean by 'baseline information'?

19. Please could you explain what is the Malaria Awareness Campaign undertaken by the Kazenze Health Zone?

Due to time constraints, we didn't have time to discuss certain concerns RAID has relating to other ERG concessions in the DRC during our meeting on 14 May 2019. However, as you are aware, RAID has conducted fieldwork in all ERG concessions, including Frontier. We would like to raise with you some concerns and/or questions we have concerning this concession:

20. We have received information concerning problems with access to water for the residents of Sakania, due to the drying up of the Lubembe river. A number of local residents informed us that they believed this was due to the work ERG had done to divert the river which resulted in a dramatic impact on local communities.

- a. Is ERG investigating the reason why the river has dried up?
- b. If so, what are the findings and conclusions of that investigation?

21. What specific steps has ERG taken to help the residents of Sakania access potable drinking water?

22. During RAID's field mission, we visited the village of Kifumpa, which was resettled by First Quantum. We were informed by local residents and observed ourselves that homes in this resettled village, which had been built by FQM, were in an extremely poor condition.

- a. Does ERG have any development plans to tackle the poor state of the homes in Kifumpa (for example, building new houses or carrying out refurbishments?)
- b. If yes, what specific steps that are planned and for when?

23. We interviewed residents from the Zambian village "21 miles" just across the border and close to Frontier's operations. Local residents informed us that half of the village was relocated by First Quantum in 2009. The remaining half of the village has stayed directly next to the concession as they had not yet been relocated when FQM left DRC. These residents have been awaiting resettlement ever since and have received little or no information about their future. Those who have remained informed RAID that they continue to be negatively impacted as a result of the regular blasting, vibration and noise from Frontier's activities. Could you please clarify:

- a) Does ERG plan to resettle the residents of "21 miles" still living next to its Frontier concession?
- b) If yes, what specific steps that are planned and what is the timeline.
- c) If no, why not?

24. During our visit in November 2018, we interviewed people who informed us that their fields had been taken by ERG some weeks earlier and fenced off, without any compensation at the time. We understand that some received compensation, but only months later. Could you please clarify:

- a) When ERG acquired these fields?
- b) How many people were impacted by the October/November 2018 land acquisition?
- c) How many people were compensated and when?
- d) How was compensation calculated?
- e) What caused the delay in compensation?



10 January 2020

Mr. Benedikt Sobotka
Chief Executive Officer
Eurasian Resources Group (ERG)
9, rue Sainte Zithe
L-2763
Luxembourg

Sent via email

Dear Benedikt,

I am writing to let you know that RAID will shortly be publishing a report concerning the KMT concession (Metalkol RTR) and its impact on surrounding communities. We have already met and been in correspondence in relation to many of the questions, but we wanted to provide ERG, as well as ENRC, the opportunity for any final comment ahead of publication.

As mentioned in our May 2019 meeting, and in our correspondence, RAID strives to reflect all perspectives in our research and publications in the interest of balanced and fair reporting. I can assure you that the views of ERG, as expressed during our face-to-face on-the-record meeting and in written correspondence, have been taken into account in RAID's forthcoming publication.

As it is our understanding that ERG S.à.r.l is the ultimate parent of Eurasian Natural Resources Corporation Limited (ENRC), we would be most grateful if you could pass this letter on to the relevant contact person at ENRC to expedite matters. A hard copy is also being sent to ENRC's registered address in the UK.

RAID's upcoming publication will cover the following points:

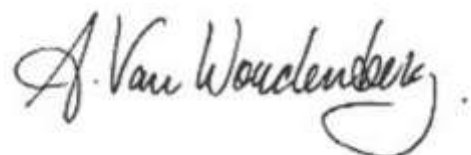
- We will report on the contents of the "DRC Corruption Scheme" as described in the statement of facts appended to the US Department of Justice's (DOJ) Deferred Prosecution Agreement with Och-Ziff. The documents can be found at this [website address](#). ENRC is the "publicly traded mining company" identified by the DOJ. The body of our report will analyse the harm suffered by Congolese residents as a result of this corrupt scheme.

- Specifically, Congolese communities surrounding the KMT mine have suffered enormously as a result of the “DRC Corruption Scheme”. Notably, a series of development programmes to IFC standards were never undertaken or were stopped prematurely when First Quantum was stripped of its licence in 2009. Some of these planned programmes for local communities have not recommenced (such as access to education and healthcare, and malaria prevention programmes), while others (such as the provision of clean drinking water) were recommenced by ERG in 2018, some nine years later. During the nine years when there was little activity at the KMT mine, local communities had very limited access to clean drinking water and other socioeconomic benefits that had been committed to as part of the First Quantum project. ERG is now undertaking new development programmes not contemplated by First Quantum in 2009, details of which we will include in RAID’s report, including the Clean Cobalt Framework. There is, however, no IFC oversight of these programmes.
- An SFO investigation focussing on allegations of fraud, bribery and corruption around the acquisition of substantial mineral assets by ENRC has been ongoing since 2013. According to media reports, including interpretation of public court documents, this investigation has looked at cash payments made during the purchase of the KMT mine in 2010 by ENRC. ENRC has always strongly denied any wrongdoing or criminality and has brought claims against the SFO over its investigation, including alleging misfeasance in public office. These claims are ongoing. ENRC has pointed out that First Quantum Minerals lost its licence in August 2009, before ENRC purchased the mine in 2010 and that it engaged in extensive due diligence before proceeding with its acquisition. First Quantum pursued international legal action to protect its rights and interests in KMT. First Quantum and its subsidiaries concluded a settlement with the Congolese government and other parties, including ENRC Congo BV, in January 2012. It is ENRC that paid the settlement amount to First Quantum Minerals.
- ERG effectively took control of the KMT mine in 2013 after ENRC de-listed from the London Stock Exchange. A factor in ENRC de-listing and ERG's purchase was the controversy over the KMT mine. In our May 2019 meeting, you said that ERG is an entirely different entity to ENRC, although, as mentioned above, we note that ERG is the ultimate parent of ENRC Ltd. We would be happy to receive further information about the relationship between ERG and ENRC and any clarifications you wish to provide.
- We will argue that the SFO and other public bodies should apply the [Compensation Principles](#) in carrying out investigations into overseas corruption, including in its investigation of ENRC. This means identifying victims of corruption during the course of its ongoing investigation. If any person or entity is convicted as part of the SFO investigation into ENRC, the SFO is required to seek compensation for these victims.

As you will see, we have sought to fairly represent ENRC and ERG's position in the forthcoming publication based on our discussions with you, our correspondence, and statements in the public domain issued by ENRC. If, however, you or ENRC wish to comment further, please do let me know by close of business on Wednesday, 15 January 2020.

We have appreciated our dialogue to date and I very much hope this will continue, both about matters concerning the KMT mine and the efforts to ensure cobalt mining is clean. RAID views these matters as bearing the utmost public interest.

Yours sincerely,

A handwritten signature in black ink that reads "A. Van Woudenberg." The signature is written in a cursive style with a large, looping initial 'A' and a decorative flourish at the end.

Anneke Van Woudenberg
Executive Director

cc: ENRC Ltd, 8th Floor, 20 Farringdon St, London, UK, EC4A 4AB

15 January 2020
Ms Anneke van Woudenberg
Executive Director
RAID

By email: woudena@raid-uk.org

Dear Ms Woudenberg,

Re: RAID Report on KMT Concession

We refer to your letter dated 10 January 2020 advising that RAID will shortly be publishing a report in relation to the Metalkol RTR concession ("RTR") and its impact on surrounding communities.

In that letter you have provided a summary of general themes on which you will report. We have requested a copy of the draft report to enable ERG and ENRC to properly address any specific allegations or questions contained within it. You have advised that it is not RAID's practice to provide drafts of reports in advance. Please note we are therefore not able to provide specific responses but have, nonetheless, addressed below the general points raised in this letter.

ERG - Sustainable Development

ERG was not a party to, and did not assume, any historic commitments made by First Quantum.

Following ERG's acquisition of the RTR project in 2013, new sustainable development commitments were introduced which were, and remain, informed by our legal commitments, including the applicable ESIA, and intensive consultation with the local communities. This consultation was conducted through Participatory Rural Appraisals (PRAs) with local communities in 2017-2018 to define their priorities. The timing of these PRAs coincided with the construction phase of the facility.

As previously noted in our correspondence and meetings with you, a key part of ERG's business is to ensure that we have in place sustainable community development practices in order to ensure that our surrounding communities benefit from our operations. ERG is a member of the United Nations Global Compact and supports the UN's wider development aims including the Sustainable Development Goals.

As part of this commitment, ERG has undertaken to implement the Compact's Ten Principles and further embed them within its culture, strategy and day-to-day operations. It has also pledged to help drive the attainment of the UN's SDGs, which are receiving an ever-growing focus across the business.

This initiative is in line with the Group's wider, longstanding commitment to ensure sustainable production, improve the quality of life for local communities and support multi-stakeholder efforts to achieve a responsible supply chain.

Sustainable development and community contributions at RTR

The approach to sustainable development at RTR is set out in the Clean Cobalt Framework:
<https://eurasianresources.lu/en/pages/sustainable-development/clean-cobalt-initiatives>.

The Framework embeds responsible business practices in what is a sensitive operating environment. Furthermore, it supports the ongoing efforts to comply with – and go beyond – the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals ('OECD Guidance').



Eurasian Resources Group

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In 2019, PwC provided their ISAE 3000 limited assurance report on this Performance Report in respect of the activities undertaken by Metalkol RTR as of March 1st 2019 demonstrating compliance with the Clean Cobalt Framework. We have provided you with copies of this Report.

We support a range of community development initiatives to improve the lives of local communities near Metalkol RTR in line with the Clean Cobalt goals. We believe that local communities should play an active role in – and take ownership of – their own sustainable development.

The PRA consultation process helps local communities to identify their own development priorities – which may develop and change over time – and supports them in the delivery of sustainable Community Action Plans (CAPs) to address these needs. Each CAP is managed by a community-led committee. Key priorities raised during the PRAs at RTR were incorporated in community development plans and budgets, including:

- Potable water distribution
- Educational access
- Support for local farming to enhance food security
- Healthcare

The use of PRAs and extensive community consultation reflects industry best practice as set out in the IFC and ICMM guidelines and an approach aligned towards sustainable development, rather than philanthropy.

Potable Water distribution

In relation to potable water distribution, we launched a potable water programme in 2017. This included the installation of 10 wells and solar-powered water distribution facilities in nine communities near the project and at the Child Protection Centre in Kolwezi (see below). We completed the first phase of the programme in 2018, investing US\$582,000 during the year. Further boreholes and solar powered facilities will be installed in these communities.

In line with our PRA process, the facilities are managed by community-led water committees (with our continued support). Community members pay a small fee to use the facilities, which the water committees then reinvest into the maintenance and operation of the systems. Water provision will remain a key area of focus for our operations in the DRC in 2020.

Education

Our investment in educational access includes a particular focus on helping children and adolescents transition out of artisanal mining and strengthening the capacity of local communities to address this important challenge. Some examples include:

The Good Shepherd International Foundation: ERG continues to support a multi-year partnership with the Good Shepherd International Foundation and Bon Pasteur, which aims to help improve living conditions in local communities, especially for women and children. First launched in 2017, ERG has pledged more than US\$1 million to support the programme.

We have also provided funding to support the Good Shepherd team in the construction of a Child Protection Centre in Kolwezi. The Centre, which was opened in September 2019, offers the only source of free education to local primary and secondary school children and forms part of a holistic programme aimed at supporting children involved in ASM activities. The Centre is expected to accommodate almost 1,000 children in 14 newly equipped classrooms in the Kanina – Domain Marial artisanal cobalt mining community. It also provides skills training for girls and women as well as agricultural capacity building to support economic empowerment and alternative livelihoods:

<https://eurasianresources.lu/en/news/Eurasian%20Resources%20Group%20supports%20inaugural%20Bon%20Pasteur%20chi>

We continue to support the Bon Pasteur Alternative Livelihood Programme near Metalkol RTR in Kolwezi, which is run by the Good Shepherd International Foundation. This programme focuses on supporting children involved in artisanal mining activities, including through the delivery of an

educational programme and the provision of food during working hours. It also aims to improve food security and income generating opportunities for local communities through support for alternative livelihoods, with a particular focus on capacity building for young women. From 2018 to January 2019, the initiative also contributed to i) the protection of 1,929 children from the worst forms of child labour, including ASM activity; 2) the training of 182 girls and 64 women to help them access the labour market; and 3) 281 women gaining alternative livelihood skills and improving their income.

In 2019, we carried out scoping studies on a further child protection centre and the start of construction of this facility in Tshala is a priority for 2020.

'Children Out of Mining – Northern Kolwezi' programme: ERG also supports a major one-year partnership with international development organisation and co-founding member of the Global Battery Alliance, PACT. The programme aims to raise awareness and strengthen child protection through a range of tailored capacity-building programmes in communities near Metalkol RTR. The programme also aims to directly support miners aged between 15 and 17 (who are typically the most financially dependent on income from ASM) through a six-month vocational training programme and apprenticeships, accompanied by short-term remuneration to help them transition into alternative employment.

Healthcare

In relation to healthcare, Metalkol is contributing to the Malaria Awareness Campaign and other health sensitisation undertaken by the Kansenze Health Zone (Cholera, Malaria, vaccination campaigns) and will continue to support the work in relation to malaria in the local area. Employees receive free medical care for themselves and their families. These programmes are consistent with the commitments set out in the FQM ESIA, which committed to workplace health and participation in regional malaria and HIV/AIDS awareness initiatives.

Malaria and health awareness initiatives will continue in 2020. Further investment in clinics, hygiene committees and sanitation projects are also budgeted for 2020.

Livelihoods

In addition to the programmes outlined above in relation to livelihoods, Metalkol is also undertaking various agricultural programmes including the provision of seed and fertiliser over a multi-year period to increase the livelihood programmes in the region. The Bon Pasteur social business programme in fish, farming and eggs was introduced in 2019. Our support to Bon Pasteur to develop livelihood business plans attracted additional multi-year funding to replicate our programmes by Daimler and Umicore. Additional programmes including nurseries and the Tshala piggery are planned for 2020. A significant investment in solar power generation plants for local communities is also planned for 2020 which will support local small businesses.

During the period from 1 January 2017 to 31 December 2018, Metalkol has invested approximately USD 2.2 m in sustainable development programmes. The 2019 investment will be released in the Sustainable Development Report 2019 and investment will continue in 2020.

In addition to the expenditure on the specific programmes above, since 2015, Metalkol and its subcontractors have been employing Congolese nationals at the RTR project. Currently, Metalkol and its subcontractors employ over 2,500 Congolese nationals in the construction and operation of the RTR project, which provides direct and indirect benefits to the local and wider DRC communities. Metalkol also remits taxes and royalties in accordance with applicable DRC legislation.

In light of the recent changes to the DRC mining law, all mining companies are required to contribute 0.3% of turnover to a community sustainability fund that will be managed by relevant stakeholders including Government, civil society/impacted communities and mining companies with community investment projects identified through extensive community engagement, consultation and meetings. The consultation process has been completed in relation to the RTR

project and has involved provincial government, civil society, primary and secondary impacted communities and also extended to overlapping chieftaincies and other stakeholders within the zone of influence. Projects are identified, discussed and amounts agreed upon over a defined period and the results from the previous PRA processes and the requirements of the ESIA have been integrated into those discussions.

IFC standards and FQM ESIA

In relation to the oversight by the IFC of the community projects, the RTR project is not funded by the IFC. As set out above, Metalkol operates in accordance with the approved ESIA, most recently updated in 2018 in accordance with current best practice. This ESIA incorporated IFC performance standards and has been reviewed by independent third parties. A summary is available on the ERGA website.

The FQM ESIA dates from 2008 and we are not aware that this was ever submitted to or approved by the relevant DRC authorities. As set out in that document, FQM intended to develop a community development plan and programme following stakeholder consultations. The PRA process adopted by Metalkol and outlined above is an industry leading approach to the development of community development plans based on stakeholder consultation.

We have obtained independent assurance of the Clean Cobalt Framework from PwC and also publicly report on various initiatives in the ERG Sustainable Development Reports: see <https://eurasianresources.lu/en/pages/sustainable-development/sustainable-development-reports>.

Yours sincerely,



Katrina White

Head of Compliance International

Eurasian Resources Group S.à r.l.

Subject: RE: Correspondence from RAID
Date: Friday, January 17, 2020 5:00:43 PM
Attachments: [image005.png](#)
[image006.png](#)
[image007.png](#)
[erg_logo-resized_987d86d6-7d50-47e7-ad37-65c466101734.png](#)
[ENRC FOM Settlement Press Release.pdf](#)

Dear Anneke,

Please find below the further comments.

We consider that your reference to ENRC in relation to the Och-Ziff DPA could leave the reader with the impression that it was suggested that ENRC was complicit in the "DRC Corruption Scheme". We invite you to make it clear that ENRC is not identified as a co-conspirator in the DPA.

You mention that RAID's upcoming publication will touch upon the fact that "...[a]ccording to media reports, including interpretation of public court documents" the SFO's investigation into ENRC "...has looked at cash payments made during the purchase of the KMT mine in 2010 by ENRC". Whilst you have not identified the reports to which you refer, and we are unsure as to which court documents you refer, you should note that ENRC made no cash payments during the purchase of the KMT mine in 2010 and, as such, any statement to this effect would be incorrect.

With respect to your statement that "ENRC [...] paid the settlement amount to First Quantum Minerals", we would refer you to ENRC's contemporaneous press release (attached) and clarify, for the avoidance of any doubt, that, as a result of the transaction agreed in January 2012, ENRC acquired, with certain limited exceptions, all of First Quantum's assets and property either physically located within the DRC or relating to the operations formerly carried out by First Quantum and its subsidiaries in the DRC, through the acquisition of: Kolwezi Investments Limited and its subsidiary Congo Mineral Developments Limited; Frontier SPRL; Compagnie Minière de Sakania SPRL; and Roan Prospecting & Mining SPRL.

Kind regards
Katrina White

Katrina White

Head of Compliance International
Eurasian Resources Group

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5 January 2012

Eurasian Natural Resources Corporation PLC

Agreement signed with First Quantum Minerals Ltd. to acquire their residual assets and settle all claims in relation to their Democratic Republic of Congo operations

Provides framework for both Companies to move forward in pursuit of their respective strategies

Agreement conditional on the completion of certain conditions and legal releases with an expected closing by end February 2012

London - Eurasian Natural Resources Corporation PLC ('ENRC' or, together with its subsidiaries, the 'Group'), today announces that it has reached an agreement with First Quantum Minerals Ltd. ('FQM') to acquire their residual claims and assets in respect of the Kolwezi Tailings project, and the Frontier and Lonshi mines and related exploration interests, all located in the Katanga Province of the Democratic Republic of Congo ("DRC"), and to settle all current legal matters relating to these interests for total consideration of US\$1.25 billion.

The transaction encompass a resolution relating to the Kolwezi Tailings project and the transfer of the Kolwezi processing plant to ENRC, enabling ENRC to commence the development of these operations. The transaction also provides for the release of any claims that FQM may have in relation to Frontier and Lonshi. This will provide ENRC with an opportunity to acquire the underlying licences and ultimately to develop these projects and discussions are currently underway. However, there can be no assurance as to the outcome of the licence discussions.

The total consideration comprises US\$750 million payable on closing, together with a deferred consideration of US\$500 million in the form of a 3-year Promissory Note with an interest coupon of 3% which is payable annually in arrears.

Under the terms of the transaction, ENRC will acquire, with certain limited exceptions, all of FQM's assets and property either physically located within the DRC or relating to the operations formerly carried out by FQM and its subsidiaries in the DRC, through the acquisition of:

- Kolwezi Investments Limited and its subsidiary Congo Mineral Developments Limited (a 65% shareholder in KMT (in liquidation), the former developer of the Kolwezi Tailings project);
- Frontier SPRL (the former owner/operator of the Frontier Mine);
- Compagnie Minière de Sakania SPRL (the former owner/operator of the Lonshi Mine); and
- Roan Prospecting & Mining SPRL (the holder of certain assets relating to the Kolwezi Tailings Project).



The processing facility at the Kolwezi Tailings project (which is under construction) is expected to be transferred to ENRC at closing.

In connection with the transaction, and as a condition of closing, it is expected that FQM, ENRC and the DRC Government (and relevant affiliated entities) will settle all disputes relating to the companies being sold and their assets and operations in the DRC. Additionally, as part of such settlement, it is expected that ENRC, FQM and the DRC Government will be releasing one another (and relevant affiliated entities) in respect of all claims and judgments relating to the foregoing or to any other matter arising in the DRC on or before the date of closing.

Closing of the transaction is expected to occur on or before February 29, 2012. Closing of the transaction is subject to certain conditions, including the receipt of any required third party consents and approvals, and settlement of the current international arbitrations in Washington and Paris together with FQM's civil action in the British Virgin Islands against the Highwind Group, which is comprised of a number of indirect subsidiaries of ENRC.

Further details will be announced upon closing of the transaction.

BMO Capital Markets is acting as ENRC's exclusive financial advisor for this transaction.

Felix Vulis, CEO of ENRC said, "*We are pleased to have secured agreement on these significant issues for our company. We have gained material assets and clarified the ownership structures in order to facilitate maximum value creation for ENRC's shareholders, the DRC and its people.*"

Strategic Rationale for the Transaction

Since the acquisition of CAMEC PLC in 2009, ENRC has accelerated its commodity diversification strategy and international expansion plans, and in doing so, built a solid platform for future growth as an international natural resources group. One of the key aspects of ENRC's diversification strategy has been the acquisition, consolidation and development of copper and cobalt licences within the African copperbelt. The settlement paves the way for fast track development of the Kolwezi Tailings project and for ENRC to become a significant global copper producer.

ENRC has an experienced copper and cobalt management team within the Company's Other Non-ferrous Division, who will provide the necessary expertise to develop and manage the Kolwezi and Frontier assets. Based on initial analysis this transaction is expected to be cash flow accretive within two full years of closing.

Asset Details



Kolwezi Tailings Project

The current operator of the Kolwezi Tailings project is Camrose Resources Limited ('Camrose'), which holds a 70% interest in the underlying licence. Gecamines and the DRC Government hold the remaining 25% and 5% interests in the licence respectively. ENRC owns 50.5% of Camrose in a joint-venture with the Gertler Family Trust. The processing facility at the Kolwezi Tailings project, which is approximately 75% complete, is expected to be transferred to ENRC at closing.

The Kolwezi Tailings project consists of a tailings dam, with mineral reserve of 1.7 million tonnes of copper and 363 thousand tonnes of cobalt, grading 1.49% and 0.32% respectively. The processing facility to be acquired and completed by ENRC consists of conventional SX/EW circuits for the production of copper cathodes, with a targeted production capacity of 70 thousand tonnes of copper and 10 thousand tonnes of cobalt per annum. ENRC believes that the construction of the processing plant is well advanced and, subject to the results of the pre-closing technical due diligence, ENRC envisages that first production is possible within the next 18 months. Additional details of the business plan, including estimated capital investment, will be communicated upon completion of pre-closing due diligence and technical studies.

Frontier Processing Facility

The Frontier processing facility comprises a mill and a concentrator, located next to the Zambian border in the south east of the DRC. Peak historical production in 2009 was 92 thousand tonnes of copper concentrate, produced at a cash cost of US\$1.13 per pound of copper. Subject to reaching agreement to acquire the underlying licence for Frontier, ENRC anticipates that Frontier will return to full production within the next 18 months. Additional details of the business plan, including estimated capital investment, will be communicated upon completion of relevant technical studies.

Conference call for analysts and investors

ENRC will host a live conference call for analysts and investors at 13:15 London time today, 5 January 2012. The dial-in number for callers is: +44 (0)20 7136 2056, with the confirmation code '1447216'. A set of slides pertaining to this announcement will be posted on the Investor Relations section of the Group's website, www.enrc.com, ahead of the conference call. A recording of the briefing will be posted on the Investor Relations section of the Group's website in due course.

-ENDS-

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About ENRC

ENRC is a leading diversified natural resources group, performing integrated mining, processing, energy, logistics and marketing operations. The operations comprise: the mining and processing of chrome, manganese and iron ore; the smelting of ferroalloys; the production of iron ore concentrate and pellet; the mining and processing of bauxite for the extraction of alumina and the production of aluminium; the production of copper and cobalt; coal extraction and electricity generation; and the transportation and sales of the Group's products. The Group's production assets are largely located in the Republic of Kazakhstan; other assets, notably the Other Non-ferrous Division, are mainly located in Africa; the Group also has iron ore assets in Brazil. The Group's entities in H1 2011 employed on average 75,050 (H1 2010: 71,090) people. In 2010, the Group accounted for approximately 4% of Kazakhstan's GDP. The Group currently sells the majority of its products to Russia, China, Japan, Western Europe and the United States. For the six months ended June 30 2011, the Group had revenue of US\$4,011 million (H1 2010: US\$3,045 million) and profit attributable to equity holders of the Company of US\$1,166 million (H1 2010: US\$902 million). ENRC has six operating Divisions: Ferroalloys, Iron Ore, Alumina and Aluminium, Other Non-ferrous, Energy and Logistics. ENRC is a UK company with its registered office in London. ENRC's shares are quoted on the London Stock Exchange ('LSE') and the Kazakhstan Stock Exchange ('KASE'). For more information on ENRC visit the Group's website at www.enrc.com.

Forward-looking Statements

This announcement includes statements that are, or may be deemed to be, 'forward-looking statements'. These forward-looking statements can be identified by the use of forward-looking terminology, including the terms 'believes', 'estimates', 'plans', 'projects', 'anticipates', 'expects', 'intends', 'may', 'will', or 'should' or, in each case, their negative or other variations or comparable terminology, or by discussions of strategy, plans, objectives, goals, future events or intentions. These forward-looking statements include matters that are not historical facts or are statements regarding the Group's intentions, beliefs or current expectations concerning, among other things, the Group's results of operations, financial condition, liquidity, prospects, growth, strategies, and the industries in which the Group operates. Forward-looking statements are based on current plans, estimates and projections, and therefore too much reliance should not be placed upon them. Such statements are subject to risks and uncertainties, most of which are difficult to predict and generally beyond the

Group's control. By their nature, forward-looking statements involve risk and uncertainty because they relate to future events and circumstances. The Group cautions you that forward-looking statements are not guarantees of future performance and that if risks and uncertainties materialise, or if the assumptions underlying any of these statements prove incorrect, the Group's actual results of operations, financial condition and liquidity and the development of the industry in which the Group operates may materially differ from those made in, or suggested by, the forward-looking statements contained in this announcement. In addition, even if the Group's results of operations, financial condition and liquidity and the development of the industry in which the Group operates are consistent with the forward-looking statements contained in this announcement, those results or developments may not be indicative of results or developments in future periods. A number of factors could cause results and developments to differ materially from those expressed or implied by the forward-looking statements including, without limitation, general economic and business conditions, industry trends, competition, commodity prices, changes in regulation, currency fluctuations, changes in business strategy, political and economic uncertainty. Subject to the requirements of the Prospectus Rules, the Disclosure and Transparency Rules and the Listing Rules or any applicable law or regulation, the Group expressly disclaims any obligation or undertaking publicly to review or confirm analysts expectations or estimates or to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any changes in the Group's expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based. Nothing in this announcement should be construed as a profit forecast. The forward looking statements contained in this document speak only as at the date of this document.

A copy of this announcement will be available on ENRC's website at www.enrc.com.