

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.

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
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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.

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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...”.

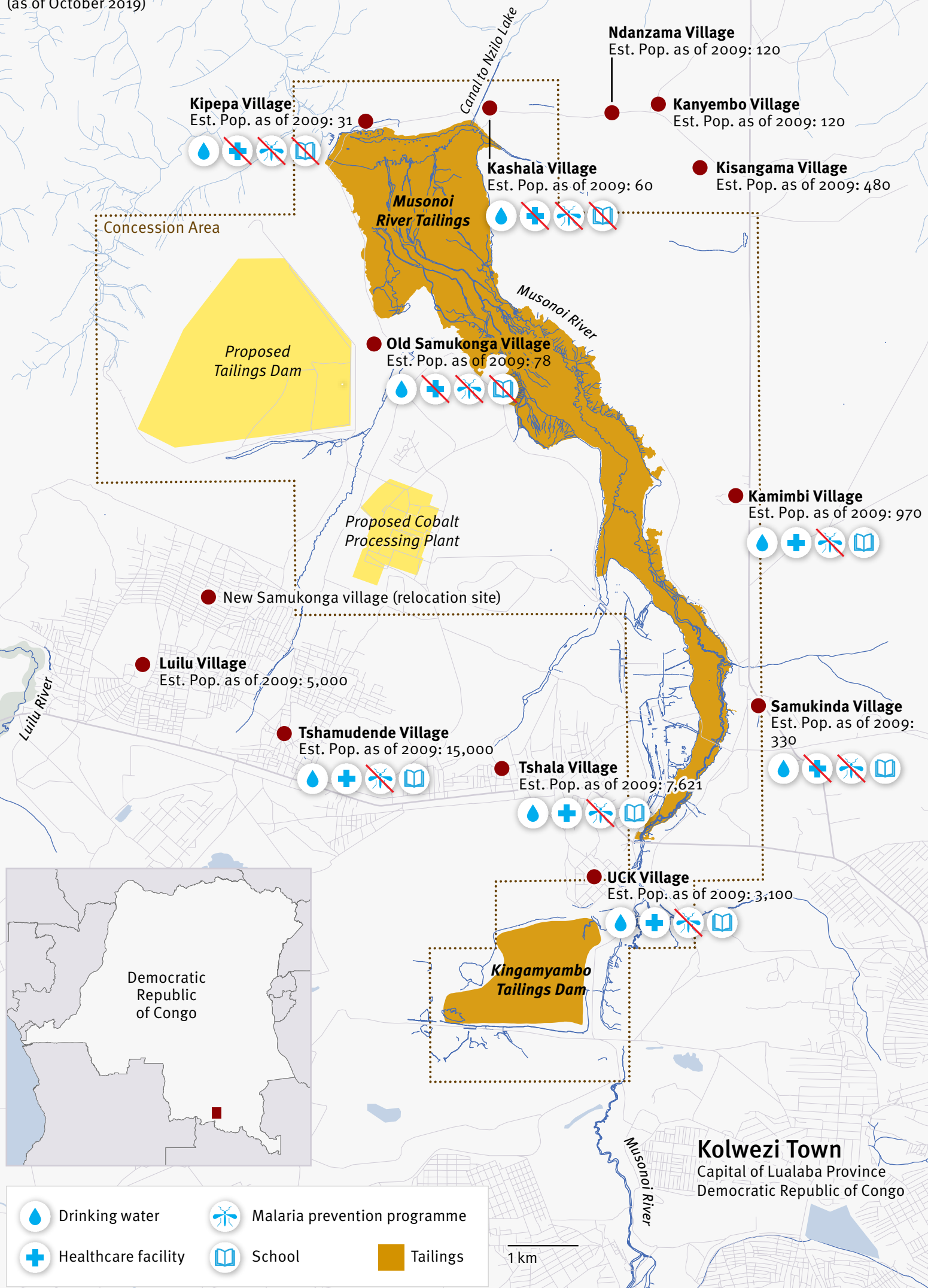
GROUP 2: KMT WORKERS

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.

Lack of Services at the Kolwezi Project

(as of October 2019)



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.

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.

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RAID | JANUARY 2020

