



Rights and Accountability in Development

Ms. Maureen Jensen
Chief Executive Officer
Ontario Securities Commission
20 Queen Street West
20th Floor
Toronto, Ontario
M5H 3S8, Canada

30 June 2017

Urgent Need to Investigate TSX-Listed Companies following Anti-corruption Action in the United States

Dear Ms. Jensen,

I am writing to express concern that the Toronto Stock Exchange (TSX) may have been used to launder assets and enable corrupt transactions that violated the United States Foreign and Corrupt Practices Act (FCPA). Since 2004, Rights and Accountability in Development (RAID), has reported on these deals, many of which concern copper and cobalt mining concessions in the Democratic Republic of Congo. I trust you will take our concerns with the highest priority, immediately initiate an investigation and take appropriate action in order to preserve the reputation of the TSX. As part of any investigation, we urge you to consider whether or not Canada's securities and anti-corruption laws were violated.

As you may know, in September 2016, US authorities acted against Och-Ziff, one of the world's largest hedge funds, for repeatedly funding corrupt transactions in Africa.¹ Och-Ziff admitted to conspiracy to violate the anti-bribery provisions of the FCPA and was fined \$412 million, one of the largest fines ever levied against a Wall Street firm. A number of the transactions identified as corrupt by US authorities concerned mining companies listed on the TSX.

As a non-governmental organization that promotes responsible business conduct and respect for human rights by companies in Africa, RAID has investigated and repeatedly reported on a number of mining deals in Congo, including those subsequently confirmed as corrupt by the US authorities. RAID has critiqued lax regulation, which has allowed mining companies with assets of dubious provenance to list on international markets.²

A chronology of RAID's publications and contacts with the Canadian authorities raising concerns over Congolese mining contracts is attached as Annex II.

Although the US authorities name some companies, but not others, all are readily identifiable from public documents. The TSX-listed companies are Africo Resources Limited and First

¹ United States of America against Och-Ziff capital Management Group LLC, *Deferred Prosecution Agreement* [hereafter, 'DPA'], Cr. No. 16-516 (NGG), United States District Court Eastern District of New York, 29 September 2016, available at: <<https://www.justice.gov/opa/file/899306/download>>.

² RAID, *Asset laundering and AIM: Congo, corporate misconduct and the market value of human rights*, July 2012.

Quantum Minerals Ltd.³ The US documents also refer to Och-Ziff's DRC Partner, an individual, who they describe as an "infamous Israeli businessman". The description matches Dan Gertler. To date no charges have been brought against Dan Gertler by the US authorities and a Gertler company has denied allegations of wrongdoing in the Och-Ziff case.⁴ As you may know, Gertler has been linked to numerous questionable business deals in Congo. Gertler entities hold, or have held, interests in Africo and another TSX-listed company, Katanga Mining Limited.⁵ More detail on the FCPA action and transactions involving all three companies is provided in Annex I to this letter and RAID's full report is attached.⁶

We believe it is vital you and your staff investigate and clarify how Gertler-controlled Africo and Katanga Mining, companies in which he held a significant holding, were able to retain a listing on the TSX throughout the period of the Congolese corruption scheme covered by the US action, namely from 2008 to 2011. Such an investigation should include details about the extent to which these companies were subject to scrutiny and regulation by the Exchange. Your findings should also be shared with law enforcement agencies if there are grounds to believe Canadian laws may have been broken. Please see below the detailed questions we believe should be considered in such an investigation.

To assist with your investigations, further details about the deals in question are attached in Annex 1. In summary, they are as follows:

The DRC corruption scheme and Canadian companies

The US Securities and Exchange Commission (SEC) confirmed that 'Och-Ziff and DRC Partner worked to acquire and consolidate assets in the DRC into an entity controlled by DRC Partner that could then be sold to a large publicly-traded mining company for a significant profit.'⁷ Och-Ziff's DRC Partner is readily identifiable as Dan Gertler and the entity he controls as Camrose Resources Limited. One of the assets acquired through corruption is referred to by the US authorities as a Canadian mining company, identified by the US Department of Justice as Africo Resources Limited, at the time listed on the TSX. To attract a buyer for Camrose, the U.S. Department of Justice (DOJ) describes how Och-Ziff and Gertler obtained an additional asset, known as Kolwezi Tailings, and how Och-Ziff knew that the latter 'had been stripped by the DRC government from a mining company immediately before being obtained by a group of companies controlled by DRC Partner and the DRC government.'⁸ Kolwezi Tailings had belonged to another Canadian company also listed on the TSX, First Quantum Minerals. The buyer of the DRC assets acquired by Gertler was Eurasian Natural Resources Limited (ENRC), which has since delisted from the London Stock Exchange amidst considerable controversy over governance. ENRC is currently under investigation by the UK's Serious Fraud Office (SFO).

Reputable media outlets reported that diplomatic pressure by the Canadian government assisted First Quantum in achieving compensation after its Congolese assets were stripped by the DRC government and flipped by a Gertler entity, Camrose's Highwind

³ Africo Resources Limited (TSX:ARL), delisted from the TSX in July 2016. First Quantum Minerals Ltd. (TSX:FM) remains listed.

⁴ Spokesman for the Fleurette Group quoted in: Franz Wild and Keri Geiger, 'Diamond Magnate at the Heart of Och-Ziff's Africa Ambitions', *Bloomberg*, 30 September 2016, <<http://www.bloomberg.com/news/articles/2016-09-30/the-diamond-magnate-at-the-heart-of-och-ziff-s-africa-ambitions>>.

⁵ Katanga Mining Limited (TSX:KAT).

⁶ RAID, '*Bribery in its purest form*': *Och-Ziff, asset laundering and the London connection*, January 2017.

⁷ Securities and Exchange Commission, *SEC Order*, 29 September 2016, paragraph 42, available at: <<https://www.sec.gov/litigation/admin/2016/34-78989.pdf>>.

⁸ *DPA*, Statement of Facts 51.

Group.⁹ To RAID's knowledge, this was the only time the Canadian Government intervened on the DRC contracts issue. At the same time, other Congolese assets were allowed to trade as part of Africo on the TSX, despite Gertler's controlling interest.

While the recent SEC and DOJ decisions do not refer to directly to Glencore's TSX-listed subsidiary, Katanga Mining Limited (KML), Gertler-controlled entities have, or have held, significant interests in Katanga Mining. In particular, RAID believes that Glencore's related-party transactions with Gertler-controlled companies, including the Fleurette Group, Lora Enterprises and African Horizons, merit scrutiny by the Canadian regulator.

In 2012, RAID published a detailed report that included details of transactions concerning First Quantum, Africo and Katanga Mining. We believe that if such transactions been properly scrutinised, then the latter two companies could not, after Gertler's participation, have continued to use their Toronto-listed status and ostensible record of compliance to attract investment.

Questions for a TSX investigation:

Did the Toronto-listed and Gertler-controlled or influenced companies referred to above:

1. Comply with section 360 of the TSX Company Manual, whereby all listed companies are "reporting issuers" as defined in the Securities Act of Ontario, and must comply with the provisions of that Act, as well as all other applicable securities legislation?
2. Comply with section 404 of the TSX Company Manual, requiring that 'to maintain its listing privilege a company must make public disclosures and keep the Exchange fully informed of both routine and unusual events and decisions affecting its security holders'? This question is particularly relevant given that the full details of the transactions described in the SEC and DOJ findings were not disclosed. RAID understands that companies must also comply with overarching National Instrument 51-102 Continuous Disclosure Obligations.
3. Given the widespread reporting of the dubious and exploitative nature of Gertler's deals in DRC at the time, did the companies concerned comply with section 407? This section states that 'Material information consists of both material facts and material changes relating to the business and affairs of a listed company. In addition to material information, trading on the Exchange is sometimes affected by the existence of rumours and speculation. Where this is the case, Market Surveillance may require that an announcement be made by the company whether such rumours and speculation are factual or not.'
4. Did Gertler-controlled or influenced companies, in light of the transactions detailed by the DOJ and SEC, comply with all sections under part M. Corporate Governance of the TSX Company Manual or with National Policy 58-201 Corporate Governance Guidelines?
5. Did the companies concerned meet the stated objective under section 705 regarding continued listing privileges 'to facilitate the maintenance of an orderly and effective auction market for securities'?
6. Did the conduct of any of the companies concerned, transacting in DRC under Gertler's control or influence, face an examination of their affairs and performance by the TSX

⁹ Matthew McClearn, 'How First Quantum settled with ENRC for compensation over Congolese mine', *Canadian Business*, 5 June 2012, <<http://www.canadianbusiness.com/business-strategy/how-first-quantum-settled-with-enrc-for-compensation-over-congolese-mine/>>.

under section. 707 'to ensure that they are of a standard that merits the continued listing of such companies.'

7. Does the TSX accept Glencore's claim that KML has complied with its disclosure obligations pursuant to Canadian securities laws and in accordance with the rules governing its listing?

While no action was taken to examine or intervene in the acquisition of Africo by Camrose (and later by ENRC) at the time, the TSX did allow Africo to delist after Eurasian Resources Group (ERG – the successor company to ENRC) bought out the remaining Africo shareholders.¹⁰ RAID believes it is critical any TSX investigation also seeks to explain whether or not it was concerned by, or had any powers to prevent, this buyout, given the advanced stage of the investigations into Och-Ziff by the US authorities and the on-going inquiry by the UK's SFO into ENRC. Africo, and its corruptly acquired DRC assets, are now in the entirely private ownership of ERG.

Since an estimated 57 per cent of the world's public mining companies are listed on the TSX and the TSX Venture Exchange (TSXV), we believe your verification checks on the provenance of assets acquired by companies listed on the exchange ought to be robust. Those responsible for non-compliance or wrong-doing should be held to account and, if any mistakes were made, these should be recognised in order to avoid repeating them in the future. The reputation of the TSX, and Canadian regulatory authorities, requires nothing less.

I await your response on when an investigation will be launched and what further action, you and your staff intend to take.

Yours sincerely,



Anneke Van Woudenberg
Executive Director, RAID

CC:

Lou Eccleston, CEO, TMX Group
Nicholas Thadaney, President and CEO Global Equity Capital Markets
Cheryl Graden, Senior Vice President, Legal and Business Affairs, TMX Group
Andrew Kriegler, CEO, Investment Industry Regulatory Organization of Canada

¹⁰ See Africo Resources Ltd., 'Africo Resources Ltd. Enters into Definitive Agreement with Camrose Resources Limited for Going Private Transaction', 13 May 2016, available at: <<http://www.marketwired.com/press-release/africo-resources-ltd-enters-into-definitive-agreement-with-camrose-resources-limited-tsx-ar1-2124766.htm>> and; Africo Resources Ltd., 'Africo Completes Going Private Transaction', 6 July 2016, available at: <<http://www.marketwired.com/press-release/africo-completes-going-private-transaction-tsx-ar1-2140304.htm>>.

Annex I

Recent violations of the U.S. Foreign Corrupt Practices Act concerning transactions with Toronto-listed companies

On 29 September 2016, the U.S. Department of Justice (DOJ) charged Och-Ziff, one of the largest hedge funds in the world, with conspiracy to violate the anti-bribery provisions of the FCPA.¹¹ The parent company resolved the case under a deferred prosecution agreement (DPA). An Och-Ziff subsidiary, OZ Africa Management GP LLC (OZ Africa), pleaded guilty to conspiracy to violate the FCPA.¹² As Och-Ziff is publicly listed, the Securities and Exchange Commission (SEC) also announced that Och-Ziff had agreed to settle civil charges of violating the FCPA.¹³ Overall, Och-Ziff agreed to pay combined civil and criminal penalties of \$412 million, the largest ever settlement concerning a Wall Street firm.

RAID's recent report *'Bribery in its purest form': Och-Ziff, asset laundering and the London connection* (attached) examines the corrupt transactions in DRC and suspicious payments in Zimbabwe, as detailed by the SEC and DOJ.

RAID draws your particular attention to sections in our current report:

Report section	Page numbers
D. The Camrose transactions	pp.14 ff.
2. Adding mining assets to Camrose I: Africo	pp.16 - 17
3. Adding assets to Camrose II: Kolwezi Tailing (KMT) and SMKK	p.18
E. The ENRC transactions	pp.19 ff.
'Katanga Mining' text box	p.10
Complaint by RAID against ENRC for the conduct of its DRC subsidiaries, including Africo	p.22

(1) Africo Resources Limited

As part of the 'DRC Corruption Scheme', the DOJ refers to 'a \$124 million convertible loan...to Company B, a DRC Partner-controlled shell entity, funded in or about and between April and

¹¹ United States of America against Och-Ziff capital Management Group LLC, *Deferred Prosecution Agreement*, Cr. No. 16-516 (NGG), United States District Court Eastern District of New York, 29 September 2016, available at: <<https://www.justice.gov/opa/file/899306/download>>.

¹² United States of America against OZ Africa Management GP, LLC, *Plea Agreement*, Cr. No. 16-515 (NGG), United States District Court Eastern District of New York, 29 September 2016, available at: <<https://www.justice.gov/opa/file/899316/download>>.

¹³ U.S. Securities and Exchange Commission, 'Och-Ziff Hedge Fund Settles FCPA Charges Och-Ziff Executives Also Settle Charges', *Press Release*, 2016-203, 29 September 2016, available at: <<https://www.sec.gov/news/pressrelease/2016-203.html>> . See also the full *SEC Order*, available at: <<https://www.sec.gov/litigation/admin/2016/34-78989.pdf>>

October 2008 (the “Convertible Loan Agreement”).¹⁴ Under the heading ‘C. Corrupt Takeover of DRC Mining Company’, the *SEC Order* describes how the \$124 million loan was used:¹⁵

first, to provide DRC Partner with approximately \$15 million to purchase a Congolese entity that had acquired the rights to a valuable mining asset in the DRC (the longstanding asset of a Canadian mining company) through an ex parte default judgment in the DRC that resulted in judicial misconduct proceedings; second, to provide DRC Partner with approximately \$100 million to purchase a majority stake in that Canadian mining company in exchange for resolving its legal issues; and third, to advance an additional \$9 million to be used for future mining operations in the DRC.

According to the DOJ, two Och-Ziff employees ‘were made aware of and participated in the corrupt payments, using funds provided by Och-Ziff to Company B...that DRC Partner made to various DRC officials to secure mining interests in the DRC.’¹⁶ The SEC confirms how ‘Och-Ziff and DRC Partner worked to acquire and consolidate assets in the DRC into an entity controlled by DRC Partner that could then be sold to a large publicly-traded mining company for a significant profit.’¹⁷

As documented in RAID’s report, the DOJ identifies the Canadian mining company as Africo Resources Limited, ‘DRC Partner’ matches notorious Israeli businessman Dan Gertler, ‘Company B’ is readily identifiable as Gertler’s Camrose Resources Limited, and the ‘large publicly-traded mining company’ matches London-listed Eurasian Natural Resources Corporation plc (since delisted from the main market and now under investigation by the Serious Fraud Office). The DRC officials include Augustin Katumba Mwanke (since deceased), parliamentarian, and Ambassador-at-Large for the DRC government, and close adviser to the DRC President, Joseph Kabila.

The US authorities describe how Och-Ziff’s DRC Partner went about obtaining assets belonging to Toronto-listed Africo.¹⁸ DRC Official 2 (Katumba Mwanke) had, through the courts, orchestrated the taking of Africo’s interest in a DRC mine. The DOJ details how Och-Ziff’s DRC Partner paid ‘\$500,000 to DRC officials, including judges, who were involved in the Africo court case to corruptly influence the outcome of those proceedings to the benefit of Och-Ziff and DRC Partner’.¹⁹ Camrose, using \$100 million from Och-Ziff, then moved in to purchase a majority stake in Africo in exchange for resolving its legal issues.²⁰

The recent action in the U.S. under the FCPA on the corrupt acquisition of Africo, the onward sale of large holdings in Africo, via Camrose, to ENRC, and the eventual delisting of Africo after its complete acquisition by ENRC’s successor company, Eurasian Resources Group (ERG), refocuses attention on why the TSX was either unaware of, or did not act upon, information that pointed to:²¹

¹⁴ *DPA*, Statement of Facts, 28.

¹⁵ *SEC Order*, 53.

¹⁶ *DPA*, Statement of Facts, 28

¹⁷ *SEC Order*, 42

¹⁸ *DPA*, Statement of Facts, 29 ff.

¹⁹ *DPA*, Statement of Facts, 38.

²⁰ *DPA*, Statement of Facts 33.

²¹ In July 2008, Camrose bought 63% of Africo ‘resolving’ the Kalukundi legal claim. In August 2010 and December 2012, ENRC bought 50.5% and 49.5% of Camrose, thereby acquiring Camrose’s holdings in Africo. ENRC delisted from the London Stock Exchange on 25 November 2013 and from the Kazakhstan Stock Exchange on 27 December 2013, becoming an entirely private company under the name Eurasian Resources Group (ERG). Africo Resources Limited remained listed on the Toronto Stock Exchange until 8 July 2016. In May 2016, Camrose, ERG’s wholly owned subsidiary, had proposed an arrangement by which it would purchase all other holdings in Africo. This arrangement was approved by shareholders in July 2016, taking the company into private ownership under ERG.

- the dubious reputation of controlling shareholders;
- the questionable provenance of assets obtained during and in the aftermath of a conflict in the DRC over lucrative natural resources;
- subsequent transactions whereby companies were acquired (it has now been established, through corruption) at knock-down prices, often to the ultimate benefit of unknown parties.

(2) First Quantum Minerals

To attract a buyer for Camrose, the DOJ describes how one Och-Ziff employee ‘worked with DRC Partner [Gertler] to obtain additional...assets known as Kolwezi Tailings and SMKK. Och-Ziff knew that Kolwezi Tailings had been stripped by the DRC government from a mining company immediately before being obtained by a group of companies controlled by DRC Partner and the DRC government.’²² The Kolwezi Tailings (also known as KMT) had belonged to another Canadian company, First Quantum Minerals, and SMKK (Société Minière de Kabolela et Kipese) to the DRC state mining company. The DOJ confirms:²³ ‘Throughout the period of DRC Partner’s acquisition of Kolwezi Tailings and SMKK, DRC Partner continued to make corrupt payments to DRC Official 2.’

The influential Africa Progress Panel, established to promote equitable and sustainable development for Africa and chaired by former UN Secretary-General, Kofi Annan, stated in 2013: ‘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’.²⁴

(3) Katanga Mining Limited

The FCPA action must, firstly, raise parallel concerns over Gertler’s transaction to acquire holdings in Katanga Mining Limited. UK-traded Central African Mining and Exploration Company (CAMEC) had been thwarted in its bid for Katanga Mining by the unexpected suspension of its mining licences by the Congolese authorities. In late 2007/early 2008, Gertler moved to acquire and merge Katanga Mining Limited with his UK-based Nikanor plc, cancelling the latter’s AIM listing. The merged company retained its Toronto-listing as Katanga Mining Limited. CAMEC clearly viewed itself as the victim of the kind of orchestration later referred to by the DOJ, when DRC officials used the domestic courts to take assets and then make these available to the DRC Partner: see *Bribery in its purest form*, pp.16 ff., on the Africo acquisition.

Until February 2017, Gertler’s Fleurette Group had a minority shareholding in Kamoto Copper Company (KCC) joint venture, a subsidiary of Katanga Mining.²⁵ Glencore, which is listed on the London Stock Exchange, now owns approximately 86.3 % of Katanga Mining. Questions have been raised by Global Witness about Glencore’s loan of \$45m to Mr Gertler in February 2009, which enabled him to preserve his shareholding in Katanga Mining.²⁶ Glencore made no such loan to other Katanga Mining shareholders. According to the *Financial Times*, Glencore ‘accepts that it has helped Mr Gertler financially, but says its involvement in a string of offshore

²² DPA, Statement of Facts 51.

²³ DPA, Statement of Facts 52.

²⁴ *Africa Progress Report 2013*, Box 9, The Kolwezi project, p.58.

²⁵ Glencore, *Press Release*, 13 February 2017, ‘Glencore purchases stakes in Mutanda and Katanga’,

<<http://www.glencore.com/assets/media/doc/news/2017/20170213-Glencore-purchases-stakes-in-Mutanda-and-Katanga.pdf>>. See also commentary by Marcus Leroux, *The Times*, 15 February 2017, ‘Glencore pays ‘infamous’ tycoon \$160m in Congo deal’,

<<http://www.thetimes.co.uk/edition/business/glencore-pays-infamous-tycoon-160m-in-congo-deal-c00hp6fxq>>.

²⁶ Global Witness, *Glencore and the Gatekeeper*, 14 May 2014,

<https://www.globalwitness.org/.../17897/glencore_and_the_gatekeeper_may_2014.pdf>.

transactions that culminated in the alleged bribery by the Israeli ended well before any illicit payments were made'.²⁷

A second matter of concern for the Canadian regulator is the evidence from Katanga Mining filings and the 2014 Extractive Industries Transparency Initiative (EITI) report for the DRC about the redirection of royalty and signature bonus payments from Gécamines (DRC's state-owned mining conglomerate) to Gertler's Africa Horizons company.²⁸ Under the original contract, these royalty payments were due to Gécamines and constitute the State's main revenue from the extraction of its natural resources. As Global Witness reported, in its filings to the Toronto Stock Exchange for 2013, Katanga Mining stated that royalty and signature payments were 'payable to Gécamines'. In subsequent filings, the words 'payable to Gécamines' were omitted and no new recipient was named. From 2013 to 2016, Katanga Mining made 'signature bonus' and other payments totalling over \$75 million to Dan Gertler's Africa Horizons company, registered in the Cayman Islands.²⁹ Glencore issued a statement saying:³⁰

Kamoto Copper Company (KCC) reported the payments that it made on behalf of Gecamines or at the behest of Gecamines as payments made to Gecamines for the purposes of the EITI because the payments discharged KCC's obligations to make these payments to Gecamines, and were made in accordance with the joint venture agreement with Gecamines executed in 2009 (JVA) or in accordance with the directions of Gecamines.

The Fleurette Group disputes the allegations about these payments saying that:³¹

Gecamines gave payment directions to KCC to make the payments due to it direct to AHIL in partial-satisfaction of the historic loan. There is no question of anything "misleading".

Recent analysis by the Congolese NGO L'Action pour la Défense de Droits Humains (ADDH) identifies, *inter alia*, the 'contradiction between the US\$22,165,101 income tax amount reported to EITI in 2014 and the US\$1,111,409 reported in KCC's financial statements' and; the 'concealed sale of Gécamines shares in the KCC project, which took the form of a transfer of royalties to Africa Horizon Investment Limited, a subsidiary of the Fleurette group'.³²

For over a decade, controversy has surrounded the assets that now comprise the Kamoto Copper mine.³³ In 2005 the World Bank stated that thorough valuations of the assets had not

²⁷ *Financial Times*, 13 March 2017 'Why Glencore bought Israeli tycoon out of Congo mines', <<https://www.ft.com/content/8c4de26e-0366-11e7-ace0-1cc02ef0def9>>.

²⁸ Global Witness. *Press Release*, 3 March 2017, 'Glencore redirected over \$75 million in mining payments to scandal-hit friend of Congolese president, Global Witness reveals', <<https://www.globalwitness.org/en/press-releases/glencore-redirected-over-75-million-mining-payments-scandal-hit-friend-president-global-witness-reveals/>>. See also Glencore's 'Response to Global Witness', 3 March 2017, <<http://www.glencore.com/assets/public-positions/doc/20170303-Glencore-Response-to-Global-Witness.pdf>>.

²⁹ Global Witness. *Press Release*, 3 March 2017, op. cit.

³⁰ Glencore, *Response to Global Witness*, 16 February 2016, available at: <https://www.globalwitness.org/documents/18788/Glencore_Response_to_Global_Witness.pdf>.

³¹ Fleurette Group, Fleurette Group responds to third Global Witness statement on KCC royalties, 3 March 2017, available at: <<http://www.pnewswire.com/news-releases/fleurette-group-press-statement-fleurette-group-responds-to-third-global-witness-statement-on-kcc-royalties-615306683.html>>.

³² ADDH, Press Release N° 001 / ADDH / GM / 2017, January 2017, 'The Kamoto Copper Company Mining Project: Who benefits from it?'. ADDH's press release and full analytical report is available at: <<http://www.congomines.org/reports/1215-projet-kamoto-copper-company-qui-en-tire-profit>>.

³³ RAID et al, 'Good governance and transparency in the mining sector in the Democratic Republic of the Congo', Memorandum to Ministers of Foreign Affairs of the Member States of the International Committee of Support for the Transition in the DRC (Comité international d'accompagnement de la transition en RDC - CIAT), February 2006.

been executed by Gécamines, that the negotiation of the contracts had been made with a 'complete lack of transparency' and that the dimensions of the assets exceeded 'the norms for rational and highest use of the mineral assets'. The Bank also called into question the technical competency of the companies who were awarded the assets.³⁴

³⁴ *Financial Times*, 3 January 2007, 'Transparency Fears Lead to Review of Congo Contracts', <<https://www.ft.com/content/c918d3a2-9a8a-11db-bbd2-0000779e2340>>.

Annex II

Chronology of RAID Publications and Contacts with Canadian authorities

May 2004: RAID raises concerns with Canadian officials at the OECD upon publication of RAID's report *Unanswered questions: Companies, conflict and the Democratic Republic of Congo*.

20 February 2006: RAID and two Belgian NGOs published a memorandum, *Good governance and transparency in the mining sector in the Democratic Republic of the Congo*, which was sent to all Ministers of Foreign Affairs of the Member States of the International Committee of Support for the Transition in the DRC (Comité international d'accompagnement de la transition en RDC - CIAT) of which Canada was a member.

The Memorandum drew upon in-depth analysis commissioned by RAID from a leading law firm into the two mine licences that were subsequently acquired by Glencore:

- (i) Fasken Martineau DuMoulin (Pty) Ltd., Analysis of the Joint Venture Agreement dated February 2004 between *La Générale des Carrières et des Mines* and Kinross Forest Limited with respect to the Kamoto Mine, the Dima- Kamoto concentrator and the Luilu hydrometallurgical plant, 19 February 2006.
- (ii) Fasken Martineau DuMoulin (Pty) Ltd., Analysis of the Joint Venture Agreement dated 9 September 2004 between *La Générale des Carrières et des Mines* and Global Enterprises Limited for the exploitation of the open pit mine of KOV and the Kananga and Tilwezembe deposits, 19 February 2006.

April 2007: RAID published *Key Mining Contracts in Katanga - the Economic Arguments for Renegotiation*, a detailed economic analysis of the Toronto-listed Katanga Mining Limited's Kamoto project. The report was public and sent specifically to the World Bank and member states of CIAT. It urged the World Bank and CIAT to undertake a comprehensive review of mining contracts.

In **2007**, the Congolese Government seized the initiative and began an opaque review, which RAID critiqued alongside Global Witness and other NGOs, issuing numerous press releases:

7 November 2007: "International Appeal for the Publication of the Final Report of the Ministerial Commission on the Review of Mining Contracts in the Democratic Republic of Congo"

4 February 2008: "NGOs fear that DRC mining contract review process has been hijacked"

18 February 2008: "Congo mining contract review: fast track or false trail?"

25 March 2008: "Publication of Congo mining contract review welcome; renegotiations should be fair and transparent"

19 July 2012: RAID published, "The London Stock Exchange – A haven for laundered conflict assets?"

May 2013: RAID files case with the UK National Contact Point (NCP) under the OECD Guidelines for Multinational Enterprises against ENRC and AFRICO. The case was highlighted to the then Canadian NCP at Global Affairs Canada. RAID is not aware of any action taken.