

To the Ministry of Finance

Recommendation 24 June 2011

(Unofficial translation)

Contents

1	Background information	2
2	Sources	3
3	What the Council on Ethics has assessed	3
4	About Randgold's activities in the DRC	4
5	The Kibali project in the DRC	5
	5.1 The conflict and the security situation in the project area	6
	5.2 Resettlement	9
6	The company's position and its communication with the Council on Ethics	11
	6.1 The company's communication with the Council	11
	6.2 The company's position	12
7	The Council's assessment	14
8	Recommendation	15

1 Background information

At its meeting on 19 April 2010, the Council on Ethics for the Norwegian Government Pension Fund Global (SPU) decided to evaluate whether there is an unacceptable risk that the British mining company Randgold Resources Ltd.¹ contributes to or is itself responsible for violations of the rights of individuals in situations of war or conflict.

As of 31 May 2011, SPU owned 959 325 shares in the company, with a market value of NOK 427 246 312.

Randgold will develop a new gold mine in Kibali, located in the northeastern DRC (Democratic Republic of Congo). Production is set to start in 2013. According to Randgold, 3,800 families – a total of 15,000 people – will be relocated from the area where the mine is to be established. Kibali is located in the Orientale Province, in an area where conflict has taken place for many decades. The conflict is characterised by particularly systematic and serious offenses, especially against women and children. The United Nations (UN) reports that these offenses are carried out by both independent militia groups, and groups within the government's army. Attacks were reported within Randgold's concession areas in the fall of 2009. In February 2011, the UN's Office for the Coordination of Humanitarian Affairs (OCHA) reported that there had been unrest at Dungu-Faradje, some 50 km from Randgold's mining area.

The Council finds that the situation of conflict raises serious questions about the security of the population living in the mining area.

The Council has been in contact with Randgold on several occasions since April 2010, both in the form of meetings and through exchanges of letters. The company has given a detailed account of its plans to ensure that the relocation of people in the mining area takes place in accordance with internationally acknowledged standards. The company maintains that there does not exist a situation of conflict in the immediate vicinity of the mining area, and that there have been no acts of violence in Kibali since the company took over the project in 2009. As concerns security, the company has signed a deal with the government authorities and the police which among other things entails that the company shall not be involved in the conflict. The company makes reference to the police's presence in Kibali and assumes that the police and the government's army will ensure peace and order in the area, as well as protect the local population.

The Council has evaluated the risk that Randgold may contribute to serious violations of the rights of individuals in situations of war or conflict through its activities in Kibali. In its evaluation, the Council has emphasized whether the situation of affected locals, who risk being subjected to serious or systematic acts of violence and other abuses, may be significantly worsened as a result of the company's activities.

The Council has also emphasized whether the company's measures appear to be sufficient to hinder gross violations of norms in relation to the company's activities, and whether the company can be said to have the capacity to adapt to changes in the conflict in order to prevent such violations from taking place.

¹ Hereafter referred to as Randgold

Randgold's security arrangements assume that the government's forces and the local police will ensure the security of the affected population. The Council emphasises the fact that the UN has pointed out on several occasions that authorities do not currently have the necessary capacity to carry out this role, that an effective system of courts is lacking, and that lawlessness and violence in the region in which the Kibali project is located are a threat to the inhabitants' security.

Based on the information available, the Council believes that there is a considerable security risk in the area. The Council is consequently uncertain as to whether Randgold's measures will be adjusted to the security risk. How the population's situation will develop in the future will be largely dependent on how the conflict develops and on whether the authorities will be capable of establishing law and order. Because of this uncertainty, the Council has decided that, in accordance with paragraphs 2 (3) and 3 (1) of the ethical guidelines, there are reasons to recommend that Randgold be placed under observation due to the risk of contributing to the violation of the rights of individuals in situations of war and conflict.

2 Sources

This recommendation is based on reports from UN organisations, research institutions, NGOs, and on information received from the company. Both Randgold and the previous owner of the Kibali project have carried out a series of surveys in order to map the demographic situation and the mining project's impact on the population in the area. Randgold has given the Council access to some of these, but the company has not wished for these reports to be made public.

3 What the Council on Ethics has assessed

Pursuant to section 2, third subsection of the Fund's Guidelines concerning observation and exclusion,² the Council has assessed whether there is an unacceptable risk that Randgold contributes to or is responsible for serious violations of the rights of individuals in situations of war and conflict. The Council's assessment focuses on Randgold's Kibali-project, located in the Haut-Uélé district in the Orientale Province of the DRC. Section 2, third subsection of the Ethical Guidelines concerns the possible contribution of companies to violations of the rights of individuals in war or conflict. In previous recommendations under the criterion of war and conflict, the company's contribution to violations of international law has formed the basis for recommending its exclusion.³ Both the way in which the decision is formulated and the preparatory work for the Ethical Guidelines nevertheless allow for widening the grounds for assessment beyond the existence of violations of international law. The present recommendation places greater emphasis on the consideration of whether a company, regardless of the existence of violations of international law, behaves in a manner that can imply '*serious violations of the rights of individuals in situations of war or conflicts.*'⁴

Neither the way in which the decision is formulated nor the preparatory work for the Ethical Guidelines provide direct guidance as to how this criterion should be interpreted, but they do

² Hereafter referred to as the Ethical Guidelines.

³ See the recommendation of 16 November 2009 to exclude Africa Israel Investments Ltd. and Danya Cebus Ltd.; www.etikkradet.no.

⁴ NOU 2003:22, page 167.

point out that operating in areas of war or conflict is not, in and of itself, necessarily unethical or in breach of international norms.

White Paper no. 20 (2008-2009) to the Norwegian Parliament states that there may ‘*be reason to pay extra attention to companies that operate in war and conflict situations. Such areas will typically be characterised by a high rate of violence and attacks, at the same time as important social institutions such as the police and court system do not exist or function poorly. This suggests that the probability of companies becoming involved in, for example, violations of fundamental human rights or corruption increases, or that the companies improperly exploit their position in another manner.*’⁵

A breach of the ethical guidelines can result from the company’s own actions, or the company’s contribution to another’s actions. The starting point for all the Council’s recommendations is that there must be a clear connection between the company’s operations and the violations. Furthermore, the company must have been aware of the violations but failed to seek to prevent them. In this case, the Council also emphasises whether the company’s own measures are sufficient to prevent serious violations and whether the company seems to have the capacity to adjust to changes in the conflict in order to avoid such violations. The question is also whether the company’s trust in the police’s capability and capacity to ensure the people’s security is adequately grounded.

In evaluating what may constitute a violation of the criterion, the Council emphasises whether the affected locals, who risk being subjected to serious or systematic acts of violence and other abuses, suffer a significant deterioration of their circumstances as a result of the company’s operations.

The Fund’s Ethical Guidelines concern existing and future violations. This recommendation centres on the possible impact of a project that the company has planned, but not yet implemented. In this case, due to the uncertainty regarding how the company will carry out the project, the Council has recommended for the first time that a company should be placed under observation. According to the Guidelines, observation may be considered when there is uncertainty about how the situation will develop.⁶ The Council presumes that observation may also be used when the situation itself requires particular caution. In light of this, the Council is of the opinion that observation may be considered

- in cases where, in principle, it appears *possible* that the company’s operations may be carried out without serious violations, **but**
- where a significant risk that the company may contribute to serious violations can be said to exist.

4 About Randgold’s activities in the DRC

Randgold Resources Ltd. (Randgold) is a British mining company that develops and operates gold mines in Mali, the Ivory Coast, Senegal, Burkina Faso and the DRC. The company is listed on the London Stock Exchange and NASDAQ in New York.

⁵ Ministry of Finance: Report no. 20 (2008-2009) to the Storting, ‘On the management of the Government Pension Fund in 2008’, p. 126.

⁶ Section 3 (1).

In 2009 Randgold acquired a stake in the concession to develop a new gold mine at Kibali, in the Haut-Uélé district of the Orientale Province, in the north-eastern corner of the DRC. The Kibali project is considered to be one of Africa's largest undeveloped gold deposits.⁷

Randgold has entered into a joint venture with the South African mining company AngloGold Ashanti for the ownership and development of the mine. The joint venture has a 90 percent stake in the project, while the remaining 10 percent belongs to the Congolese state-owned mining company Okimo. Randgold and AngloGold Ashanti each have a 50 percent ownership in the joint venture. The joint venture is governed by a joint venture agreement and controlled and authorized by a joint venture committee, in which the partners have equal representation. Decisions require the approval of both parties.⁸ Randgold is the operator of the Kibali project.

5 The Kibali project in the DRC

The exploration permit area covers 1,836 sq km and is situated some 560 km north-east of the city of Kisangani, approximately 150 km west of the border with Uganda. The project is located in the so-called Kilo-Moto Gold Belt. The mining site itself will occupy around 35 sq km and be located near the towns of Doko and Durba in the Watsa territory of the Haut-Uélé district (see Figure 1)⁹. The mine is expected to start production in the course of 2013, having an annual production capacity of 4 million tons of ore. Once the mine is in operation, it will employ approximately 500 people. The project's planned lifespan is 19 years.¹⁰



Figure 1: Geographic location of the Kibali project.¹¹

⁷ <http://www.randgoldresources.com>

⁸ Randgold Resources Limited SEC 20F filings for 2010, p. 17; available at www.randgoldresources.com/randgold/content/en/2009/statutory-2010?oid=200922&sn=2009+detail&pid=20918.

⁹ Randgold Resources Ltd Annual Report 2010, p. 38-42; available at www.randgoldresources.com

¹⁰ See footnote 9. Based on opencast and underground mining, the mining complex will include processing plants, tailings and waste rock deposits, as well as the infrastructure necessary for the operation.

¹¹ Randgold 2011: Social and Community note.

5.1 The conflict and the security situation in the project area

The DRC is about the size of Western Europe and has more than 60 million inhabitants. Long periods of war and conflict have beset the country since it gained its independence from Belgium in 1960. During the war that raged in the DRC between 1998 and 2003, seven African countries and many armed militia groups were involved in what was called ‘Africa’s first world war’. Over the past 13 years an estimated 5.4 million people have lost their lives as a result of war, hunger and disease in the country. The DRC’s large mineral resource deposits are among the factors that have fuelled the conflict, as parties have taken advantage of the anarchy to enrich themselves.¹²

In recent years the conflict has continued mainly in the north-eastern parts of the country. Much of the attention has been directed at the Kivu provinces (south-east of the Orientale Province), where fighting broke out in 2007 between Tutsi militia groups, government forces and other armed groups, including UN forces. The humanitarian consequences have been significant, and the atrocities committed against the population by soldiers from both militia groups and government forces have been particularly brutal and widespread.¹³

Around 2008 the conflict flared up in the Orientale Province as well, spreading from the border with Sudan and south towards the project area.¹⁴ The Council is aware that in 2008 fighting was reported in areas some 100 km from the Kibali project site. In 2009 local militia groups carried out attacks near the town of Durba, which is situated in the heart of the concession area, about 15–20 km north of Watsa town.¹⁵ In February 2011 the UN Office for the Coordination of Humanitarian Affairs, OCHA, reported unrest in Haut-Uélé, particularly between Dungu and Faradje some 50 km north-east of Randgold’s project area. Several villages had been attacked by militia groups, forcing the inhabitants to flee.¹⁶

A number of armed militia groups operate in the Haut-Uélé district, but the LRA (the Lord’s Resistance Army), a rebel group originally from Uganda, is especially feared because of its brutality towards civilians.¹⁷ In September 2008 Congolese government forces, together with UN forces based in the area (MONUC), attacked the LRA. After this incident the LRA’s violence against civilians escalated.¹⁸ In September and October 2009 the LRA launched

¹² See for example http://news.bbc.co.uk/2/hi/africa/country_profiles/1076399.stm, Artisanal Mining in the DRC (Key Issues, Challenges and Opportunities), CASM, August 2007, page 4.

¹³ See for example Amnesty International 2008: NORTH KIVU: NO END TO WAR ON WOMEN AND CHILDREN <http://www.amnesty.ca/amnestynews/upload/AFR620052008.pdf>

¹⁴ The “project area” is located in Randgold’s “concession area” and is also, by the company, called “the exclusion zone”, see Figure 3.

¹⁵ Mapping Conflict Motives: Province Orientale (DRC), 17 March 2010, International Peace Information Service (IPIS)

¹⁶ Bulletin d’Information Humanitaire, 08/2/2011, Province Orientale, ‘Publication hebdomadaire provinciale produite par OCHA avec la coopération de la communauté humanitaire’.

¹⁷ Joseph Kony founded the Holy Spirit Mobile Force 2 in northern Uganda in 1987 after a rebel group of the same name was crushed while opposing President Yoweri Museveni’s government. In 1989 Kony renamed the militia the Lord’s Resistance Army, claiming that the group’s objective was the establishment of a Christian-inspired theocracy in Uganda. The LRA moved into southern Sudan in the mid-1990s. In 2005 the Sudanese peace settlement and the indictment of Kony by the ICC forced the LRA to cross into the DRC’s Garamba National Park. In December 2008, Ugandan, Sudanese and Congolese (DRC) armies launched a joint offensive in Garamba, but failed to capture the LRA’s leadership. The LRA, which is divided into small groups, move on foot across the Uélé districts of north-eastern DRC, the east of the Central African Republic and parts of Southern Sudan. See: <http://www.irinnews.org/Report.aspx?ReportId=89494>

¹⁸ <http://www.unhcr.org/4d6ce0299.html>

attacks in the vicinity of Faradje and Watsa (see Figure 2) and there have been reports that they have a presence around Durba/Watsa, within Randgold’s concession area.¹⁹

The United Nations Joint Human Rights Office has documented human rights violations and violations of international humanitarian law perpetrated by the LRA and others, including murder, mutilation, sexual violence, looting, and abduction.²⁰ Abducted boys are used as child soldiers and girls as carriers and sex slaves.²¹ In the Haut-Uélé and Bas-Uélé districts, some 300,000 people have been forced to flee because of the group’s activities. In the period from September 2008 to June 2009, the LRA is said to have been responsible for 1,200 killings, 1,400 kidnappings (of these, approx. 630 are said to have been children and 400 women), and the destruction and looting of thousands of buildings (including schools, hospitals and churches).²² Similar atrocities have also been reported in 2010.²³

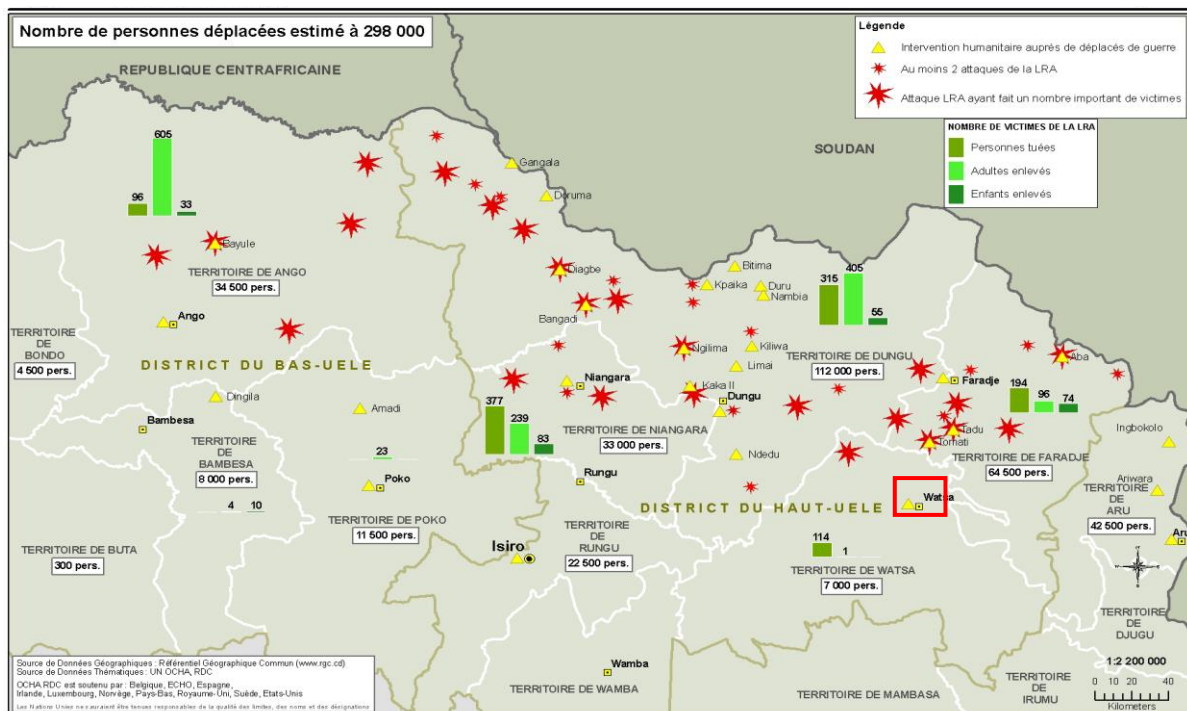


Figure 2: Map which shows attacks by the LRA. The location of the project area around Watsa is indicated by a red box. Stars show attacks by the LRA, triangles show places where there is humanitarian intervention to help those who have fled because of war. Green columns show number of dead (left column), number of adults who have been abducted (middle column) and number of children who have been abducted (right column).²⁴

¹⁹ ‘Mapping Conflict Motives: Province Orientale (DRC)’, IPIS, 17 March 2010, page 16. And see UNHCR at: <http://www.unhcr.org/refworld/pdfid/4d5e14c52.pdf>

²⁰ Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, S/2011/20, 17 January 2011, para. 45.

²¹ http://www.intersos.org/sites/default/files/images/DRC_LRA-paper_Ghost-of-Christmas-Past_2010-12-14_EN_0.pdf

²² ‘Summary of fact finding missions on alleged human rights violations committed by the Lord’s Resistance Army (LRA) in the districts of Haut-Uélé and Bas-Uélé in Orientale province of the Democratic Republic of Congo’, December 2009, para. 72.

²³ See footnote 20, para. 65.

²⁴ http://www.internal-displacement.org/8025708F004CE90B/httpCountry_Maps?ReadForm&country=Democratic%20Republic%20of%20the%20Congo&count=10000

In 2010 and 2011 there have been reports of increased activity by the LRA. The group currently operates in three countries, Sudan, the Central African Republic and the DRC, while its area of activity is 20 times bigger than in 2008.²⁵ The African Union and the UN have taken initiatives to improve the protection of civilians against the LRA. In the long term this may eliminate the LRA's capacity to terrorize civilians.²⁶

The DRC government forces, *Forces Armées de la République Démocratique du Congo* (FARDC), have positions in the project area, including in the area around the towns of Durba and Watsa.²⁷ Their primary task is to fight the LRA and protect the civilian population. According to surveys that the organization International Peace Information Service (IPIS) has carried out in this area, members of the FARDC have been involved in human rights violations against civilians.²⁸ The UN has also documented cases where the FARDC have committed abuses against the population.²⁹ Furthermore, the IPIS surveys show that several FARDC units are staffed by former members of militia groups, that independent units occur, and that the command lines appear to be unclear.³⁰ According to the UN, '*military operations targeting LRA in the Democratic Republic of the Congo have made little progress.*'³¹ So far, the FARDC have not succeeded in their fight against the LRA and have thus not been able to provide security for the local population.

The causes of the long-lasting conflicts in the country and in the province of Orientale are many and complex, being motivated by historical, ethnic, political, economic and social factors. The Council does not find it relevant to go into further detail on these here. There is no doubt, however, that the state of lawlessness, where the government seems to have neither the authority nor the capacity to exercise control, as well as the lack of a judicial system, contribute to preserve a particularly dangerous situation for the local population.

In fact, the question of how civilians may be protected has been raised repeatedly at the UN Security Council. The Secretary-General's last report on the situation, from January 2011, states: '*The protection of civilians continues to be an overriding imperative. I continue to be deeply concerned about the high levels of insecurity, violence and human rights abuses facing the population of the Democratic Republic of the Congo, particularly in the conflict-affected areas in the eastern part of the country. Looting, rape, forced labour and robbery remain daily occurrences in this region. The recruitment and abduction of children by armed groups are also of concern. Human rights violations by national security elements are frequently reported. Well-known structural deficiencies of the armed forces, including lack of training, supplies, equipment and logistical support, hinder the efforts of the Democratic Republic of the Congo authorities to impose discipline and bring perpetrators to justice. Those challenges are compounded by the incomplete and tenuous integration of CNDP*'^[32]

²⁵ http://www.intersos.org/sites/default/files/images/DRC_LRA-paper_Ghost-of-Christmas-Past_2010-12-14_EN_0.pdf

²⁶ See footnote 22, para. 17 and 82.

²⁷ http://www.ipisresearch.be/maps/Orientale/20100322_MappingOrientale.pdf, p. 21.

²⁸ http://www.ipisresearch.be/maps/Orientale/20100322_MappingOrientale.pdf, p. 20.

²⁹ Reported, among others, in the Security Council's resolution 'The situation concerning the Democratic Republic of the Congo', 29 November 2010 (S/RES/1952 (2010)), in 'Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo', 8 October 2010 (S/2010/512), and in 'Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of the Congo', 9 July 2010 (S/2010/369).

³⁰ 'Mapping Conflict Motives: Province Orientale (DRC)', IPIS, 17 March 2010, page 21.

³¹ Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2010/164, 30 March 2010, para. 2.

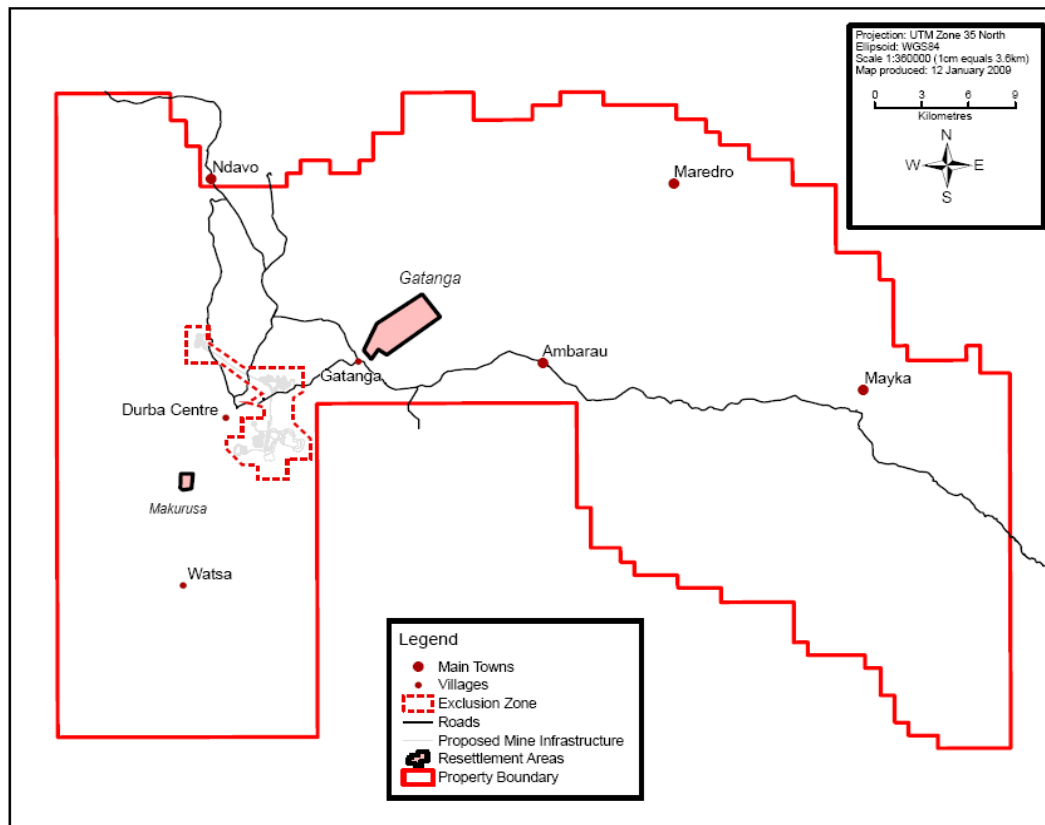
³² Congrès national pour la défense du peuple, a militia group that is active in the conflict in the Kivu area.

and other Congolese armed groups into FARDC, and the involvement of some FARDC personnel in the illegal exploitation of natural resources.’

Considerations regarding the civilian population’s security in places such as the Orientale Province have also been an important reason why the UN Security Council passed a resolution in May 2010 on the continued presence of UN forces in the province.³³ The resolution notes, however, that the conflict and the security situation hardly can be solved without addressing the underlying problems: ‘These include establishing of effective State authority; building professional and adequately equipped and supplied security and rule-of-law institutions, in particular the armed forces, the national police and the judiciary; curbing the illegal exploitation of natural resources; addressing the weak or absent presence of the State; and neutralizing illegal foreign and local armed groups.’³⁴

5.2 Resettlement

Randgold will develop the mine in an area characterised by a long-lasting violent conflict distinguished by extensive and brutal attacks on civilians. According to Randgold, 3,800 families, the equivalent of 15,000 people, must be moved out of the area where the mine is to be established.³⁵ The mining site referred to as the exclusion zone by the company encompasses approximately 30 sq km and will not be accessible to the population (see Figure 3).³⁶ Today there are 20 villages in the area.³⁶



³³ S/RES/1925 (2010), preamble.

³⁴ S/2011/20, para. 80.

³⁵ <http://www.randgoldresources.com/randgold/content/en/2009/page10065>

³⁶ Randgold Resources 2011: Social Impact Note.

*Figure 3: Map of Randgold's concession area (red solid line) and exclusion zone (red dotted line)*³⁷

The inhabitants of the exclusion zone, more than half of whom are under 25 years of age, make their living mainly from agriculture (to a great extent subsistence farming) and small-scale artisanal gold mining. Gold mining is the most important source of income for the population, and according to Randgold this has also attracted migrant workers from the surrounding and conflict-torn areas, such as the neighbouring Ituri district.³⁸ There are 11 smaller opencast mines within the zone which, to the Council's knowledge, employ more than half of the male population in the area. Children (6–10 years old) also work in the opencast mines to provide income for their families. The influx of workers creates a local market for the farmers, and many also engage in trade.³⁹ The area offers few other employment opportunities.

Gold mining has been an important and legal livelihood in the area for several decades, where many have mined gold on contracts for the state-owned mining company OKIMO. Once a company has been awarded a mining concession however, other forms of gold mining become illegal. Gold mining has been stopped in the exclusion zone but still seems to be ongoing in the concession area.⁴⁰

Studies commissioned by Randgold show that local communities are characterized by great poverty, poor health and high levels of illiteracy. Infrastructure, such as water supply and sanitation, is non-existent; most dwellings are simple wattle and daub huts.

The resettlement may have positive or negative consequences for a population that already is in a vulnerable position. In order to avoid serious negative effects to the greatest extent possible, the company has prepared a Resettlement Action Plan including measures and guidelines on how to compensate the population within the exclusion zone. One of the measures will be the establishment of a new town, Kokiza, on the outskirts of Durba, featuring new housing and necessary infrastructure as well as farmland (see Figure 4). Schools are also to be built, while training and jobs that can create employment in both the short and long term will be offered. The resettlement is scheduled to start in June 2011 and to be finished in 2013.⁴¹

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Annual Report 2010, p. 42.

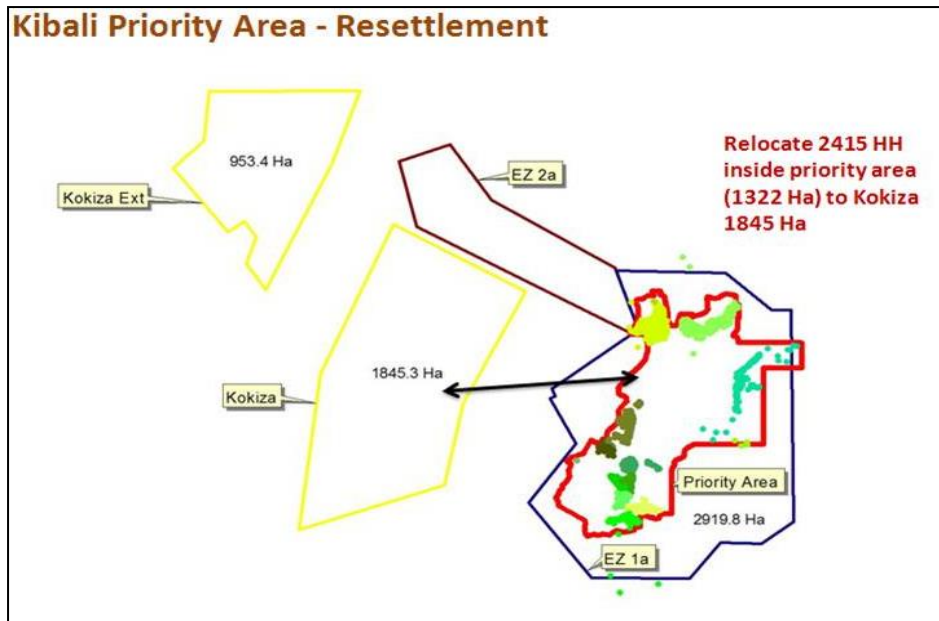


Figure 4: Sketched map showing the exclusion zone (marked by a blue line) and the new resettlement areas Kokiza and Kokiza extension (marked by yellow lines)⁴².

As described above, the resettlement will take place in an area beset by conflict and where militia groups perpetrate atrocities against civilians. The unstable situation in the region may be further exacerbated by the influx of internal refugees and other groups. This may create a tense relationship between local inhabitants, who already barely eke out a living from scarce resources, and the immigrants. According to reports by UN organisations, there are some 320,000 internally displaced persons who are fleeing from the LRA in the districts of Haut-Uélé and Bas-Uélé.⁴³ In July 2010, there were approximately 9,500 internally displaced persons in the Watsa-Durba area.⁴⁴ It is uncertain how many of these may be staying within the exclusion zone.

6 The company's position and its communication with the Council on Ethics

6.1 The company's communication with the Council

The Council has communicated with Randgold since the spring of 2010. Two letters have been written to the company, on 19 May 2010 and 3 September 2010, to which the company replied on 4 June 2010 and 28 September 2010 respectively. A meeting was also held with Randgold in January 2011. The draft recommendation was sent to Randgold on 16 May 2011 and the company forwarded its comments on 8 June 2011.

The Council has obtained information from the company on several issues, particularly regarding the resettlement, enquiring about who will be responsible for carrying it out, how

⁴² Randgold Resources 2011: Draft Resettlement Action Plan.

⁴³ This figure shows the number of internally displaced persons in the Orientale Province, <http://www.un.org/apps/news/printnewsAr.asp?nid=34562>.

⁴⁴ UN Office for the Coordination of Humanitarian Affairs (UN OCHA) August 2010 (map) available at <http://reliefweb.int/sites/reliefweb.int/files/resources/46AA82E6760300AF85257789005AB42A-map.pdf>.

the security of the population will be ensured, and how the company assesses the conflict in the area.

6.2 The company's position

In its comments to the draft recommendation, Randgold expresses that it “*wholeheartedly believes that besides the formal financial and economic rationale for the development of the Kibali project its implications for the social upliftment and development of the people of North Eastern DRC would be immense.*”⁴⁵

According to the company, the relocation of 15,000 people to new settlements represents one of the key challenges of the project.⁴⁶ The company has designed a Resettlement Action Plan which is to be implemented in such a way as to ensure that the human rights of the affected parties are respected: ‘*Randgold Resources has consulted thoroughly with the communities through its elected Community Liaison and its Resettlement Working Group (elected by secret ballot) committees and with all interested and affected parties, including local institutions such as the churches, the government of Kinshasa, the regional and the territorial administrations. This includes consulting and agreeing with affected members of the community about compensation and resettlement preferences and Randgold Resources is responsible for effecting agreements made. These will meet all legal requirements and be congruent with IFC guidelines. Therefore, the human rights of the community are fully considered, including resettling and compensating people who rent accommodation in the exclusion zone and replacing wattle and daub structures with brick structures for which they will have legal title as arranged by Randgold Resources on their behalf.*’⁴⁷ In its plan, the company describes the specific measures that will be implemented and the compensation associated with the resettlement.

In its letters to the Council and in the media, the company has declared that the situation in the area is calm and does not show signs of conflict. “*Randgold acknowledges that the conflict situation in the North Eastern part of DRC is complex, however, since taking over operatorship in October 2009 the incidents of security breaches have diminished. Randgold has maintained close links with the local security infrastructures to ensure that it is aware of any outbreaks of unrest and whilst some have occurred, none has been in the immediate vicinity of the project, nor have any of the inhabitants living with the ambit of the project been affected by such unrest.*”⁴⁸

Randgold further explains that “*The most persuasive evidence to refute the concept of a conflict ridden area is that the people in the exclusion zone specifically chose to be relocated to Kokiza, 5 km from Doko, rather than to other areas of the DRC.*”⁴⁹

In order to avoid being given a role in the conflict, Randgold has informed the DRC authorities that ‘*they [Randgold] do not support private armies and will not engage in the activity of creating one for the protection of its investment in the DRC.*’ Randgold has signed

⁴⁵ Letter from Randgold Resources, 8 June 2011.

⁴⁶ <http://uk.finance.yahoo.com/news/Randgold-Resources-afxcnf-2008521065.html?x=0>

⁴⁷ Letter from Randgold Resources, 28 September 2010. IFC stands for “International Finance Corporation”.

IFC is a part of the World Bank Group and aims at creating economic growth in developing countries through i.e. giving advice to corporations and governments, and also through financing projects run by private corporations. See <http://www.ifc.org/ifcext/about.nsf/Content/WhatWeDo>.

⁴⁸ Letter from Randgold Resources 8 June 2011.

⁴⁹ Ibid.

an agreement with the government forces and the police, signifying that the company will not be involved ‘*in the creation of law and order or peace*’ and that it will not be asked to contribute materially or otherwise to the services and tasks of the police or government forces.⁵⁰

Randgold expects the police and government forces to ensure adequate security, law and order for the mining operation to be carried out. The company has entered into an agreement with the authorities of the Orientale Province to ensure that government forces act in accordance with international law, safeguard the human rights of inhabitants and employees, and prevent the misuse of company assets by the military.⁵¹

With regard to the company’s internal security arrangements, Randgold explains that: ‘*An independent security company has been appointed who is exclusively responsible for the security of assets located on site. Such company is not authorised to carry firearms in its duties.*’⁵²

The police is responsible for ensuring law and order in the area. According to Randgold, through a local contingent in the Kibali area and patrolling, the police presence is felt in the whole area. The company writes in its letter that: “*The police contingent at Kibali is seconded from its base at Bunia. These police officers are mobile, have excellent communications and have received specialized Human Rights training from the United Nations at Bunia. In addition, further discipline, policing, mine policing and weapons handling training has been provided to this contingent by international security consultants at Kibali. Since its deployment at Kibali, there have been no complaints or grievances received from the community.*”⁵³

According to Randgold, the police has never been attacked and its presence supposedly dissuades rebel groups. They say among other things that “*The police unit has never been attacked nor has it had to use its weapons. Security experts have stated that the police presence in the area deters the LRA and others from coming into the area as the latter insurgents modus operandi is to stay away from guarded areas;*”⁵⁴

Randgold states that it keeps up-to-date on the security situation in the area through regular and formal meetings with members of the local community and through contact with other sources that work in the area. If concrete threats come to light, the police, local authorities and the UN will be notified. The company also says that it has developed plans for evacuation and crisis management.⁵⁵

The company has not provided details as to how the security of the population will be maintained during the relocation itself and after the 15,000 individuals have moved to the new town of Kokiza. The company has not informed the Council how internally displaced persons not covered by the Resettlement Action Plan will be managed either.

⁵⁰ Letter from Randgold Resources, 4 June 2010.

⁵¹ See footnote 47, attachment *Kibali Security Protocol*.

⁵² Letter from Randgold Resources, 4 June 2010.

⁵³ Letter from Randgold Resources, 8 June 2011.

⁵⁴ Ibid.

⁵⁵ Letter from Randgold Resources, 28 September 2010.

7 The Council's assessment

The Council on Ethics has assessed whether Randgold Resources Ltd.'s activities in Kibali, in the north-eastern part of the DRC, may be in breach of the Ethical Guidelines' criterion on companies' contribution to – or responsibility for – serious violations of the rights of individuals in situations of war or conflict. Given the insecurity around the possibility of ensuring the security of people in connection with the planned development and operation of the Kibali mine, the Council has assessed whether the company should be placed under formal observation.

In evaluating what may constitute a violation of the criterion, the Council has stressed whether the affected locals, who risk being subjected to serious or systematic acts of violence and other abuses, suffer a significant deterioration of their circumstances as a result of the company's operations. In this respect, the Council has also emphasized the extent to which the company's measures seem to be sufficient to prevent serious violations.

The Council takes as its point of departure that Randgold is in the process of building a gold mine in a conflict area characterized by militia groups that terrorize, loot and perpetrate extremely violent acts against the local population. The Council attaches importance to the reports of attacks around the towns of Durba and Watsa, situated within Randgold's concession area, some 30 km from the site where the mine will be constructed. This is also where the LRA reportedly is present. Government forces are located in the same area, but have so far not been able to provide security for the population. The UN has repeatedly reported that also government forces commit human rights violations and that the lack of state control and the absence of an efficient judiciary constitute a great threat to the security of local communities.

In its communication with the Council on Ethics, Randgold has repeatedly pointed out that there is no conflict in the immediate vicinity of the project area. According to OCHA however, militia groups have carried out attacks along the Dungu-Faradje stretch, approximately 50 km north of the project area, as recently as the spring of 2011. In the fall of 2009, the LRA is to have carried out an attack in Durba, within Randgold's concession areas and near the area where the new town will be established. The company does not comment this case in particular, but highlights that it is not aware of any violent acts taking place in the Kibali area since the company took over the project in 2009. The Council finds that this can indicate that the security situation in the area of the mine is unclear, but that there can be no doubt that the region in which the gold mine lies is an area with a considerable risk of violent conflict.

In this situation, Randgold proposes to move 15 000 people out of the mining area to a new city which the company is currently establishing within its concession area, just north of Durba. According to the company, the inhabitants will be offered new and better housing as well as compensation for lost income. The company believes that this will have a positive effect on the living conditions of local inhabitants. The Council agrees that, by itself, this may improve the situation of those being relocated and is, *a priori* positive towards the company's Resettlement Action Plan.

The Council's concern is nevertheless whether the company will *de facto* be able to ensure the safety and security of the population during and following the resettlement. There are several risk factors surrounding the project which may worsen the security situation of people in the area. The Kibali project may constitute a stabilising element, but it may also increase

the conflict – in the same way as resource extraction has done in other parts of the DRC. The relocation of so many people in a situation which is already tense will also be risky. The Council is not aware of the extent to which the company has carried out an assessment of how security will be managed under the relocation, nor how security will be preserved in the new settlement. Furthermore, the situation of internally displaced people within the project's area remains unresolved.

Randgold's security policy presupposes that the DRC's government forces and local police will uphold law and order in the area, and that security will be ensured so that the mining operation will be feasible. The company has hired a Congolese security company to safeguard the assets within the mining area, and the guards are supposed to be unarmed. Beyond this, local police will take care of security in the concession area in general. The UN has nevertheless repeatedly called attention to the government's lack of sufficient capacity to fill this role today, the absence of an effective judiciary, and the threat that the lawlessness and violence poses to the security of the residents of the region where the Kibali project is located.

Based on the available information, the Council believes that there is a considerable security risk in the area. Even though, as the company claims, people in the mining area and other local actors have not yet been exposed to attacks, given the area's situation of conflict there is a clear risk that this may take place.

The Council is unsure of how Randgold's security plans and measures will be sufficient as regards the risk for violence and conflict in the area. Whether local authorities and the police will be in a condition to ensure the security of the area, a central element in Randgold's own security evaluation, is especially uncertain. Because of this insecurity, the Council has reached the conclusion that the company should be placed under formal observation. Because the relocation will conclude in 2013, the same year as the mine is set to start production; the Council recommends an observation period of four years from the date of publication of this recommendation.

If, within the observation period, it comes to light that Randgold's activities contribute to the deterioration of the local population's security situation, the Council on Ethics will assess whether there are reasons to recommend that the company be excluded from the Fund's investment universe.

8 Recommendation

The Council on Ethics recommends that Randgold Resources Ltd. be placed under observation due to the risk of contributing to serious violations of individuals' rights in situations of war or conflict. The observation concerns the company's Kibali project in the Haut-Uélé district of the Orientale Province in the DRC.

Gro Nystuen Bente Rathe Ylva Lindberg Ola Mestad Dag Hessen

Chair

Sign.

Sign.

Sign.

Sign.

Sign.