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Dan Och's African Nightmare

Och-Ziff has settled U.S. corruption charges over investments it made in Africa. But many of the firm's dealings are raising questions for investors about exactly where their money went.

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On August 16, Samuel Mébiame was arrested by U.S. federal prosecutors and charged with bribing African officials to obtain mineral rights to some of the continent's most lucrative assets. Son of the late Léon Mébiame, a former prime minister of the Central African country of Gabon, Mébiame, 43, had made something of a career for himself as a fixer, operating in West and Central Africa, using his political connections to help secure mining rights.

According to the U.S. government's case, between 2007 and 2015 Mébiame worked as a consultant for a joint venture between a U.S.-based hedge fund firm and a Turks and Caicos–incorporated entity. In the complaint, filed in a federal district court in Brooklyn, the government alleges that “Mebiame’s job was to source and secure mining opportunities in Africa for the Joint Venture and one of its portfolio companies.” To secure these valuable assets, Mébiame was “routinely paying bribes to foreign government officials.” Using evidence provided by Mébiame’s hedge fund client — which is cooperating with the government — to support its case, along with records obtained through search warrants, witness statements, and Mébiame’s voluntary confession, obtained during two meetings with federal law enforcement in June 2015, the government has accused Mébiame of bribing government officials in Niger, Guinea, and Chad.

Mébiame certainly appeared to know that he was involved in something illegal. In a September 2009 e-mail to his clients, quoted by the U.S. government in its affidavit in support of his arrest, the Gabon native told the owner of the Turks and Caicos entity and an employee of the joint venture as much. “You sistematicaly [sic] used corruption in Africa to get the assets you have,” Mébiame wrote. He threatened to go to the press to expose the alleged misconduct if he did not get an ownership stake in a specific mining company. Mébiame’s attorney declined to comment for this story, citing the ongoing court proceedings.

Mébiame is just one player in a complex network that, operating over nearly a decade, sought to obtain mining rights to some of the most potentially lucrative resources in Africa through influence peddling, bribery, and in some cases the alleged financial support of corrupt African leaders. A key participant in this network for about five years, starting in 2007, was Och-Ziff Capital Management Group — the cooperating hedge fund in Mébiame’s case —the $37 billion, publicly traded firm founded by former Goldman, Sachs & Co. partner Daniel Och with backing from the Ziff Brothers Investments family office.

For years Och-Ziff has been one of the blue-chip firms in the $3 trillion hedge fund industry and has boasted such high-profile, risk-averse public pension clients as the California Public Employees’ Retirement System (CalPERS), the New Jersey Division of Investment, and the Florida State Board of Administration. Now shareholders, investors, and others are asking how such a seemingly upright institution as Och-Ziff became involved in so many backroom African deals. Some of these deals led to a five-year investigation of Och-Ziff’s investments in Africa and forced the firm to shell out $412 million —

the fourth-largest Foreign Corrupt Practices Act (FCPA) settlement in history — to settle bribery charges with the U.S. government, in a deal announced September 29.

The trouble does not end there, however. In the past few months, billions of dollars have flowed out of Och-Ziff's funds. Fitch Ratings and Standard & Poor's have cut Och-Ziff's credit rating. Its shares, which debuted in November 2007 at $32 apiece, were hovering around $3.20 in late October.

Almost six weeks after Mébiame's indictment, Och-Ziff agreed to pay a $213 million Department of Justice criminal penalty and a $199 million Securities and Exchange Commission resolution to resolve the bribery charges. In addition, the SEC asserted that Och-Ziff CEO Dan Och and CFO Joel Frank violated the antibribery, books and records, and internal controls provisions of the Securities Exchange Act of 1934. Och agreed, without admitting or denying guilt, to personally pay a civil sanction of $2.2 million. Frank also consented to the SEC order without admitting or denying the findings. The firm's subsidiary OZ Africa Management GP pleaded guilty to one count of violating FCPA.

"In its pursuit of profits, Och-Ziff and its agents paid millions in bribes to high-level officials across Africa," one of the prosecutors in the case said in the DoJ statement announcing the settlement.

Och-Ziff is now hoping to put what its CEO has called a deeply disappointing episode behind it, yet recent events have been a blow to the 55-year-old Och's reputation as a business builder and a leader. A graduate of the University of Pennsylvania's Wharton School, he got his start on Wall Street at Goldman Sachs' famed risk arbitrage desk and went on to become the bank's head of equity and proprietary equity trading. It was Och's luck — or prescience — to start Och-Ziff in 1994, at a time when hedge funds were beginning to transform from the private investments of the very wealthy to something that forward-thinking institutions, particularly foundations and endowments, wanted to be in. By the time of Och-Ziff's 2007 IPO, investors included the likes of Goldman Sachs, Blackstone Group, the U.K.'s Wellcome Trust, and CalPERS. Dan Och is now worth an estimated $2.6 billion. He and his firm declined to comment for this story.

Now some of Och-Ziff's investors, and at least a portion of Och's net worth, may be in jeopardy. Firmwide assets under management plunged from $48 billion on June 30, 2015, to $36.9 billion in late-October 2016, owing to a combination of lackluster performance, an industrywide backlash over hedge fund fees, and the firm's legal woes. The day before the FCPA settlement was announced, the New Jersey State Investment Council voted to redeem $190 million from Och-Ziff as part of the public pension fund's retrenchment from hedge funds. After the settlement Goldman Sachs pulled about $350 million invested in Och-Ziff through its employee retirement fund. (Both funds still retain investments with Och-Ziff, however.) The settlement may also hamper the hedge fund firm's ability to manage corporate pension money, which is subject to oversight from the Department of Labor under ERISA, if it does not receive the necessary waivers.

Some investors who have spoken with Och say they feel reassured by the steps the firm has taken. Following the settlement Och-Ziff, which in 2014 had hired a former SEC general counsel as its chief legal officer, stressed that it had strengthened its compliance procedures; it has installed a monitor for three years to ensure that no future violations take place, per its agreement with the government. In a public statement about the settlement issued the day the agreement was announced, the firm laid much of the blame for its legal woes at the feet of two former employees: Michael Cohen and Vanja Baros. Och-Ziff said the two men "deliberately concealed their misconduct from other employees." Neither Cohen nor Baros has been charged with a crime for any of their dealings in Africa. "We are confident that, when the facts are known, it will be clear that Michael Cohen has done nothing wrong," Cohen's attorney, Ronald White, said in a statement. Baros could not be reached for comment.

Michael Cohen, it turns out, was not a rank-and-file employee of Och-Ziff. Though Vanja Baros, a private equity analyst, was a relatively minor player at the firm, Cohen was a partner and head of Och-Ziff's European office. One of five key senior investment partners who helped build the firm before its IPO, Cohen, who joined the asset manager from Franklin Mutual Advisers in 1997, once described himself in U.K. court testimony as Och's "protégé." In 1999, at age 27, Cohen was sent to London to help establish and run the U.K. and European operations. When Och-Ziff went public, Cohen was the third-most–highly compensated executive.

Even before the IPO, Och had been transforming the firm, building up its private equity and deal-making bench and turning toward more long-term investments. The strategy was very different from the more- liquid merger arbitrage–type opportunities that defined the early years of Och-Ziff, and post-IPO the firm was even more keen to widen its reach. A key part of the strategy was to strike partnerships around the globe. One such partnership: Africa Management Ltd., or AML.

AML, and the many entities that came to touch it, form an extraordinary web into which Och-Ziff invested hundreds of millions of dollars in client money. It has ties to the prisons of apartheid-era South Africa, the diamond mines of the Democratic Republic of the Congo (DRC), and even the privatization of the former Soviet Union. The web extended over the shifting political landscape of a continent in transition, through public and private markets, and at offices in Johannesburg, London, Miami, New York, Paris, and Tel Aviv. The dealings of Och-Ziff's African investment partners spanned numerous countries, including Chad, the DRC, Libya, Niger, the Republic of Guinea, South Africa, and Zimbabwe. The network, worthy of a John le Carré novel, is only now starting to unravel.

But it all started with AML. Och-Ziff told its investors that AML, formed with Mvelaphanda Holdings and Palladino Holdings, would put capital to work in private and public markets in Africa, with a bias toward natural resources and related businesses.

Turks and Caicos–based Palladino Holdings was owned by South African businessman Olaf Walter Hennig. Also known as Mvela Holdings, Mvelaphanda Holdings is a South African conglomerate owned by businessman and politician Mosima Gabriel (Tokyo) Sexwale, and one of the country's largest and most prominent Black Economic Empowerment groups.

"We are delighted to be entering into a partnership with Tokyo Sexwale, Mvela Holdings and Palladino," Och said in a January 2008 press release announcing the joint venture. Mvela Holdings CEO Mark Willcox was to act as CEO of AML.

Willcox served on the board of the new company's subsidiary, Africa Management (UK) Ltd., alongside Och-Ziff employees Cohen and Baros and two other non-Och-Ziff directors.

Born in the Johannesburg, South African township of Soweto in 1953, Sexwale grew up amid the turmoil and hardship of apartheid. A black African, he joined the armed movement of the African National Congress. Ultimately imprisoned along side Nelson Mandela, Sexwale was released in 1990 after serving 11 years. In the 1994 elections, which officially ended the country's apartheid regime and brought the ANC to power, he was elected premier of the new Pretoria-Witwatersrand-Vereeniging (now Gauteng) province before entering the private sector in 1998. He then formed Mvelaphanda Holdings.

"There were a group of investors and a group of bankers that have been known to get almost everything of value in Africa," says Mahmoud Thiam, who served as mining minister for the government of Guinea in 2009 and 2010. Thiam says the group included Sexwale, Willcox, and Hennig. "Everyone thought that Tokyo Sexwale, with his ANC ties and South African connections, was getting special treatment," he notes. Sexwale, Willcox, and Hennig have not been charged with any wrongdoing in connection with their business dealings.

Even before the formation of AML, Och-Ziff lent more than $86 million to Hennig's company, which Hennig used to secure mining rights in Chad and Niger — including, according to the SEC, "using a portion of the funds to pay bribes to facilitate the acquisitions." In its case against Mébiame, the U.S. Department of Justice documents how in Niger the fixer allegedly used a series of bribes to officials on behalf of Hennig and Och-Ziff to obtain and retain the rights to certain uranium mining interests.

Mébiame was not the only character Och-Ziff dealt with in Africa. In 2008 the firm began working with Dan Gertler, an Israeli tycoon who had amassed his fortune through the DRC's diamond mining industry. Gertler had developed a

close relationship with the DRC's now-president, Joseph Kabila. In an e-mail, quoted by the SEC in its September 29 order, from an Och-Ziff attorney requesting a background report on Gertler from a due-diligence firm, the attorney noted that Gertler "will be very easy to find . . . perhaps the impetus behind the movie 'Blood Diamonds'" — a reference to the 2006 Leonardo DiCaprio film about profiteering in war-torn Africa. Through Gertler, Och-Ziff gained access to deals in the DRC and Zimbabwe. A spokesman for Gertler's firm did not respond to requests for comment. In press reports Gertler has repeatedly denied any wrongdoing in his dealings in Africa, and he has never been charged with a crime in relation to them.

A series of loans to Gertler-owned or Gertler-controlled companies doing business in the DRC resulted in the one criminal penalty for Och-Ziff's subsidiary OZ Africa Management GP. Yet as the government's ongoing criminal case against Samuel Mébiame shows, the net cast is even wider than the DoJ's case against Och-Ziff.

Alpha Condé was elected president of Guinea on November 15, 2010. His win came as a surprise to some observers: Condé had received 18.2 percent of the vote in the first-round runoff, while his most popular opponent received 43.7 percent. In the final round, however, Condé won with 52.5 percent of the votes cast.

The Simandou mountains in southern Guinea are home to some of the world's most valuable deposits of iron ore. Condé pledged to revise the country's mining codes so that more of the wealth would go to impoverished Guinea — and less to corporations. In the process of this redrafting, one of the groups that came under pressure to pay more for its existing Guinean rights was an entity called BSG Resources, owned by Israeli billionaire Beny Steinmetz.

The government of Guinea ended up seizing BSG's mines. BSG Resources is now seeking the return of those assets through an arbitration process at the World Bank's International Center for Settlement of Investment Disputes. Witness statements submitted as part of the arbitration testimony allege that Condé rigged the election with the help of Hennig, Mébiame, Sexwale, and others. In an eyewitness statement onetime BSG employee Asher Avidan recalls a March 2012 meeting at Hennig's offices in London. There Hennig allegedly told Avidan that "President Condé had sought the help of the South African government to fund his election campaign, and asked that they loan $50 million in exchange for options and/or stakes in operational mines and exploration projects in the country." Condé has not been charged with election rigging or any other wrongdoing in connection with the matter.

None of the evidence reviewed by *II* suggests that Och-Ziff was involved in the 2010 Guinea election. However, AML partner Hennig and the fixer Mébiame are alleged to have been involved in the redrafting of the mining code, according to testimony before the World Bank arbitration body and the complaint against Mébiame.

Subsequent to the election and the change in the mining code, Hennig, according to various court documents and reports, needed to raise money for a deal with the government of Guinea, whereby he would lend $25 million to a government entity, allegedly as a means of securing a share of a state-owned mining company that owned rights to the Simandou iron mines. The $25 million came from a stock transaction whereby African Global Capital II — one of the two funds managed by AML, the joint venture with Hennig and Och-Ziff — bought $77 million of shares in a publicly traded oil and gas company, Ophir Energy, from a Hennig-owned entity. Hennig had previously acquired those same shares for a much lower price from Sexwale's Mvelaphanda Holdings. Hennig's $25 million loan was collateralized by a subsidiary of the state-owned mining company; the alleged plan was for Guinea to default on the loan, leaving Hennig and his backers with the mines. The government, and Hennig's company, have denied this, according to press reports.

Och-Ziff's Baros, at least, was aware that Hennig needed funds for dealings in Guinea. Evidence from the SEC's September 29 administrative order shows an e-mail from AML CEO Willcox to Baros in which Willcox said, "How can we get agc [African Global Capital] to put 50m into guinea?" Baros allegedly then began working on the Ophir Energy trade. And Mébiame told the AML joint venture partners that he had exclusive access to Guinea mining opportunities. The SEC charged Och-Ziff with self-dealing on the Ophir-Hennig trade. The commission also said Baros and Cohen concealed the true nature of the transaction.

The Guinea situation has some similarity with how Och-Ziff came to be involved, at arm's length, in Zimbabwe. A U.K. charity, Rights and Accountability in Development, is among the groups that have documented how in 2008 a U.K.-registered company that traded on the London Stock Exchange — Central African Mining and Exploration Co. — loaned $100 million to a new CAMEC Zimbabwean subsidiary. The subsidiary used the loan to pay off certain obligations it had to the Zimbabwean government of President Robert Mugabe.

At the time, Mugabe, who has ruled in Zimbabwe since 1980, looked likely to lose his bid for reelection. It has been widely alleged that the $100 million loan funded a state-sponsored campaign of violence in which as many as 200 people were killed, 5,000 more were beaten and tortured, and 36,000 were displaced. Mugabe subsequently won reelection.

Och-Ziff has not been found guilty of any criminal wrongdoing related to Zimbabwe. The SEC, however, did find evidence that African Global Capital I, the other AML-managed entity, came to be invested in CAMEC at the urging of Israeli tycoon Gertler. The commission also included in its order a June 2008 text message from Willcox that Cohen forwarded to Baros that said, "paid 4 arms into zim[babwe], and rented boats from china." (China is the main supplier of arms to Zimbabwe.) Neither Baros nor Cohen informed anyone else at Och-Ziff of what they had been told about where their money had gone, according to the SEC's order. Nor did they stop doing business with Gertler.

CAMEC was subsequently acquired by Eurasian Natural Resources Corp. A now privately held metals and mining company, ENRC was formed in the 1990s as part of the privatization process of Kazakhstan. In addition to owning CAMEC, ENRC, which listed on the London Stock Exchange in 2007 and de-listed in 2013, acquired some of Gertler's DRC mining interests.

Transcripts from the BSG case in Guinea show that ENRC was discussed as a likely acquirer of the Simandou assets that Hennig and his backers were promised. In the end, Hennig never got his Simandou mines. After a negative article in the U.K. press, the government-owned entity repaid the $25 million loan.

In March 2014, Och-Ziff announced through a regulatory filing with the SEC that "beginning in 2011, and from time to time thereafter, we have revived subpoenas from the SEC and request from the U.S. Department of Justice in connection with an investigation involving the FCPA and related laws."

Not long after the government's investigation began, in July 2012, Cohen, Baros, and Willcox resigned from the board of Africa Management (UK) Ltd. That firm's principal client also changed, from AML to Hennig's Palladino Holdings.

As Africa Management (UK) Ltd. was being rolled up under Hennig, change was also under way within Och-Ziff. In 2013 both Cohen and Baros left the firm. Cohen resigned from the board of Och-Ziff Management Europe in March 2013.

So what did Dan Och know and when did he know it? Evidence from the SEC and others shows that Och-Ziff's Africa agents, as well as Cohen and Baros, often acted autonomously. The SEC, however, cited Och for urging the firm to push ahead with potential transactions with Gertler, despite having been "aware of the risk of corruption in the transactions with the DRC Partner [as Gertler is referred to in the complaint], and contrary to the recommendation of his legal and compliance team." According to sources, Och was told the DRC deals were high-risk but not illegal. The SEC found that Och was not aware of the bribes.

Och-Ziff has continued to lose assets, its troubles exacerbated by ongoing underperformance of its funds. To date, apart from Mébiame, no key individuals in Och-Ziff's African orbits have been charged with a crime. Mark Willcox continues as CEO of Sexwale's Mvelaphanda Holdings. In November 2014 he married his fiancée at a luxurious South African estate, serenaded by John Legend.

In February, Sexwale, who served from 2009 to 2013 in South African President Jacob Zuma's government as minister of Human Settlements, withdrew his bid to become president of the global soccer oversight board, FIFA. Sexwale, Hennig, and Willcox could not be reached for comment.

As recently as September, Gertler's firm, Oil of DR Congo, was reported in the press to be in negotiations with the Tanzanian government over an oil pipeline. According to reports, the U.K.'s Serious Fraud Office is still looking into a deal

Gertler struck to sell DRC mining assets to ENRC.

Samuel Mébiame is being held without bail. In his angry September 2009 e-mail to Willcox and Hennig, he wrote, “If I am not given the money that i have work for several years turning a [mining company] with 0 assets to a Multi million dollar company, including giving your companies top African network that you are today using for free. . . . i can assure you that you will also loose [sic] a lot, because I will let the world know what kind of international crooks you are.” Mébiame is believed to be cooperating with authorities. •

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