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5 May 2009

Attention: Dr. Mark Egan, Commons Clerk of the Joint Committee on Human Rights

**Global Witness Submission to the Joint Committee on Human Rights' Call for Evidence on Business and Human Rights**

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**Highlighting Threats to Human Rights by UK Companies operating in Conflict or High Risk Areas**

1. Global Witness appreciates the opportunity to make this submission to the Joint Committee on Human Rights.
2. We identify the circumstances that need to be taken into account by UK-based companies that operate in conflict or high risk areas where there is an abundance of natural resources. The UK Government has failed to take action to prevent or deter abuses by UK companies operating in these areas, in particular in the Democratic Republic of Congo (DRC). As a result, the UK Government should play a greater role in regulating and advising these companies in order to minimise human rights violations and other abuses. Drawing upon Global Witness' work, we highlight five specific instances where current UK Government action has been inadequate. A recommendations section and annex with five case studies are also included.
3. Global Witness is an NGO that exposes the corrupt exploitation of natural resources and international trade systems. We obtain evidence which we use to drive campaigns that end impunity, resource-linked conflict, and human rights and environmental abuses. Global Witness was nominated for the 2003 Nobel Peace Prize for its work on conflict diamonds. We work predominantly in conflict-affected countries, emerging markets and in countries with totalitarian regimes and low levels of transparency.
4. As articulated in Professor John Ruggie's report "Protect, Respect and Remedy: a Framework for Business and Human Rights" home states (*i.e.* countries where companies are registered) need to play a greater role in minimizing human rights abuses caused or contributed to by their companies operating in conflict affected areas.
5. In 2007, Global Witness seconded a member of staff to work with Professor John Ruggie and his team. As part of this secondment, a policy paper and number of

recommendations were submitted pertaining to the regulative, advisory and facilitative role that home states can play in minimizing human rights abuses caused by their companies operating in conflict areas.

6. Global Witness believes that greater regulatory and policy measures that have an extra-territorial effect are required which will apply to UK-registered companies operating in conflict or high risk areas.
7. We take the position that human rights are non-negotiable regardless of the economic climate. We strongly believe that the UK government should not loosen its ethical requirements of UK business operating in conflict or high risk areas in order to reduce the impact of the global recession.
8. Global Witness restates Professor's Ruggie's position that companies have a responsibility to do 'no harm' when it comes to human rights. We also believe that when corporate related human rights abuses occur, often as a result of core operations, that these cannot be off-set by other philanthropic behaviour such as building clinics or schools.
9. We support a number of submissions made by other NGOs, including CORE's proposal for the establishment of a new commission with sanctioning powers over UK companies.

**UK companies are at risk of committing or contributing to human rights violations in conflict or high risk areas**

10. Currently, UK companies are operating in conflict or high risk areas where there is fighting, widespread repression and weak protection against human rights violations. These volatile areas are not limited to areas of armed conflict, as defined by international humanitarian and criminal law, but also include areas experiencing civil war, an absence of rule of law and accountability, brutal government regimes that seek to repress human rights, or, those post-civil war countries with sporadic violence, and localised areas of civil unrest.
11. Often in these conflict or high risk areas the host government (*i.e.* the country where corporate operations are being conducted) is *unable or unwilling* to assume its responsibility in safeguarding human rights. Thus, protections are weak and companies are at a greater risk of committing and exacerbating human rights violations. In these areas, gross human rights violations take place and criminal activity often goes unchallenged. Without regulation and targeted policy developments at the international level, and interventions made by the home states of these companies, corporate involvement in human rights abuses will continue unabated.
12. In addition, the lucrative 'rents'<sup>1</sup> available from natural resources are known to spur a state party or warring factions to gain control over them, which can cause or exacerbate conflict and human rights violations. A recent UN report on the relationship between natural resources and conflict, finds that forty percent of all intrastate conflicts since 1960 have a link to natural resources. It also concludes

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<sup>1</sup> 'Rents' are unearned funds that are used by governments or controlling factions for financial gain - they reflect revenues that exceed costs or what would be normal profit margins for that resource. In conflict or high risk areas these profits are often larger because actual costs are lower due to underpaid labour and/or illegal operations.

that intrastate conflicts linked to natural resources are twice as likely to relapse within five years.

13. For example, Global Witness' field research in eastern DRC and neighbouring countries in 2008 and 2009 uncovered substantial evidence of the involvement of armed groups in the exploitation and trade of cassiterite (tin ore), gold, and other minerals in North and South Kivu. These economic activities are perpetuating the instability in the region and UK companies are involved.
14. Ultimately, the unaccountable exploitation of natural resources can lead to states suffering the 'resource curse': the phenomenon by which the generation of natural resource wealth from the exploitation of natural resources in states captured by unaccountable elites, results in poor standards of human development, bad governance, increased corruption and state looting, and very often conflict.
15. In these instances home states, such as the UK Government, need to assume both a proactive and sanctioning role to fill in the 'governance gaps' by taking steps to ensure that their companies neither perpetuate nor are complicit in human rights abuses arising by virtue of their operations in these areas.
16. As highlighted by Professor Ruggie, international law does not prevent the UK Government from playing a role in protecting against corporate human rights abuses in conflict or high risk areas. Moreover, because of the unique circumstances associated with conflict or high risk areas, the UK may even be entitled to take more assertive action.
17. Already, countries such as Norway and Sweden have started to recognise their role as primary caretakers for protecting human rights arising from their business in conflict affected areas.<sup>2</sup>
18. In addition, responsible business has asked for increased guidance for companies operating in weak governance areas. The International Chamber of Commerce has stated that national governments needed "...to create the underlying legal framework for protecting human rights and to take action when those rights are denied."<sup>3</sup>

### **Current shortcomings relating to the UK Government's actions in preventing or deterring abuses**

19. The UK Government's response to instances where their companies are operating in conflict or high risk areas has been on an ad-hoc basis. For example, in the past official statements have been made by the UK Government warning UK-registered companies against operating in Burma and Zimbabwe. We believe such public statements are valuable, however, their infrequency highlights the lack of a systematic approach.
20. In addition, the UK Government is a signatory to a number of corporate and human rights related voluntary initiatives including: the Voluntary Principles on Security and

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<sup>2</sup> Both countries have adopted a zero tolerance approach for state investments in project finance deals that have a negative impact on human rights. Notably, Norway's Pension Fund and Ethical Guidelines for investment implemented by the Council of Ethics.

<sup>3</sup> IOE, ICC and the Business and Industry Advisory Committee (BIAC) submission "Business and Human Rights: The Role of Business in Weak Governance Zones, Business Proposals for Effective Ways of Addressing Dilemma Situations in Weak Governance Zones" (December 2006).

Human Rights and the OECD Guidelines for Multinational Enterprises (OECD Guidelines). However, voluntary initiatives are insufficient. They must be supplemented with accountability mechanisms that ensure compliance and whereby there are significant consequences such as criminal sanctions where necessary.<sup>4</sup>

**Five specific instances arising from Global Witness' work:**

*i) Global Witness complaint against Afrimex under the OECD Guidelines (January 2007) - (see: Annex "A" Case Study 1)*

21. Global Witness applauds the UK National Contact Point's (NCP) final statement upholding allegations that UK-registered Afrimex had failed to ensure that its trading activities did not support armed conflict and forced labour in eastern DRC. A significant part of NCP's conclusions rested upon the fact that Afrimex had not exercised sufficient due diligence to its supply chain, and that some of its suppliers had made payments to rebel groups thus contributing to the conflict.<sup>5</sup> Nevertheless, the NCP final statement in itself is insufficient.
22. In the final statement, issued in August 2008 the NCP made a number of recommendations to Afrimex. However, by February 2009 the NCP had not received any information from Afrimex about the implementation of its recommendations.
23. Since submitting the OECD complaint in January 2007, information gathered by Global Witness confirmed that Afrimex continued to trade in 2007 and 2008 with at least one supplier identified in the December 2008 UN Final Report of the Group of Experts for the Democratic Republic of the Congo (UN Expert Report),<sup>6</sup> as buying minerals produced by rebels and responsible for grave human rights abuses.
24. In March 2009 Afrimex finally advised the UK NCP that it had stopped trading in minerals from eastern DRC in September 2008, after the final statement was issued. However, this claim remains unsubstantiated by Global Witness and the UK Government.
25. The UK government should take further action to ensure that Afrimex fundamentally change its practices regarding eastern DRC, and that the investigation and conclusions of the NCP are more than just a theoretical exercise. At the international level, the UK Government should report Afrimex and its directors to the UN Sanctions Committee pursuant to UN Security Council Resolution 1857. Global Witness believes that continued trade by Afrimex justifies that it falls within the criteria of paragraph 4(g) of that Resolution.<sup>7</sup> **See: Recommendations Section paragraphs 43-44.**

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<sup>4</sup> See: Global Witness publication "Oil and Mining in Violent Places" located at [http://www.globalwitness.org/media\\_library\\_detail.php/580/en/oil\\_and\\_mining\\_in\\_violent\\_places](http://www.globalwitness.org/media_library_detail.php/580/en/oil_and_mining_in_violent_places).

<sup>5</sup> Final statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Afrimex (UK) Ltd, 28 August 2008; Department for Business Enterprise and Regulatory Reform (BERR) press release "Mineral trade helped fund rebels", 28 August 2008.

<sup>6</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/N08/618/77/PDF/N0861877.pdf?OpenElement> (last accessed 29 April 09).

<sup>7</sup> UN Security Council Resolution 1857 (2008), 22 December 2008 S/RES/1857 (2008) calls for the renewal of the arms embargo with respect to the DRC and financial and travel restrictions against those acting in breach of the embargo, until 30 November 2009. The basis for our request rests in paragraph 4(g) of the Resolution, which states that the criteria for sanctions extend to "individuals and entities supporting illegal armed groups in eastern DRC through illicit

26. Global Witness believes the OECD Guidelines remain a weak, non-binding mechanism. In particular, the NCP cannot compel a company found to be in violation of the Guidelines to change its corporate practices. This underscores the need for the UK Government to monitor company behaviour after final statements are issued and ensure compliance. Without doing so, breaches of the OECD Guidelines may continue thereby perpetuating and endangering human rights.
27. Furthermore, the UK government should send a clear signal to UK-registered companies that it expects them to carry out thorough due diligence to ensure that their trade is not funding any of the warring parties in high risk areas. The UK Government should be able to define the conditions under which companies should be permitted to operate in these areas. It is not good enough that a company be transparent with respect to its trading partners - due diligence should be regularly performed and updated throughout the lifecycle of operations. With respect to Afrimex, the UK Government should have taken steps to sanction the company long before Global Witness' intervention – these important cases should not only be left to civil society to undertake. **See: Recommendations Section paragraphs 45-47.**

*ii) Amalgamated Metal Corporation (AMC) cited in UN Expert Panel reports as funding warring factions in eastern DRC - (see: Annex "A" Case Study 2)*

28. Stronger measures are required to supplement current UK Government practice as demonstrated by the identification of two UK based companies in the 2008 UN DRC Report.<sup>8</sup>
29. The 2008 UN Expert Report establishes that the comptior Panju, which is one of the main suppliers of THAISARCO (a subsidiary of AMC) in South Kivu eastern DRC, has close links with an armed group responsible for committing grave human rights abuses against civilians.
30. As early as 2002, AMC were included in a list of companies considered by the UN Panel of Experts to be in violation of the OECD Guidelines.
31. In December 2008, Global Witness wrote to THAISARCO and its UK-registered parent company AMC inquiring about their trade with the DRC and their due diligence policies. AMC responded by letter dated 19 January 2009 outlining its general policy toward the DRC stating they do not operate directly with the DRC.
32. Global Witness believes that THAISARCO and AMC fall within the criteria of paragraph 4(g) of UN Security Council Resolution 1857<sup>9</sup> and urges the UK Government to investigate AMC and its four constituting UK companies and, if warranted, recommend to the UN Sanctions Committee that these companies, and their directors, be included in the list of companies and individuals against whom sanctions are imposed. **See: Recommendations Section paragraphs 43-44.**

*iii) Turkmenistan and the UK Export Credits Guarantee Department - (see Annex "A" Case Study 3)*

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*trade in natural resources.*" Sanctions would include an assets freeze and travel ban. Afrimex has been named by UN Panel of Expert Reports for the DRC since 2002.

<sup>8</sup> The two named UK companies included Afrimex and AMC.

<sup>9</sup> See explanation in footnote 7 - the basis for our request rests in paragraph 4(g) of the Resolution 1857, which states that the criteria for sanctions extend to "*individuals and entities supporting illegal armed groups in eastern DRC through illicit trade in natural resources.*" Sanctions would include an assets freeze and travel ban.

33. Within the context of the UK Government's support for gas exploration projects in Turkmenistan, Global Witness submits that the UK Government should ensure that human rights concerns remain central to all exploration agreements made by UK companies requiring its financial support. The UK Government should: 1) set higher standards than those that currently exist for UK companies; and 2) take measures to ensure that its funding is not fuelling human rights abuses 3) require companies to provide a Human Rights Impact Assessment (HRIA) and show that adequate due diligence has been taken to ensure that they will not be complicit in any human rights violations. As a precondition, export credit should only be provided on the basis that UK companies disclose payments made to foreign governments. **See: Recommendations Section paragraph 52.**

34. Global Witness is especially concerned by recent moves to downgrade the UK Government's ability to police ethical and environmental standards when offering taxpayer-guaranteed insurance to British companies wanting to work on overseas projects. As reported by the press, the proposed new Industry and Exports (Financial Support) Bill will be a step backwards with respect to the UK Government's efforts to fulfil its obligations under the State Duty to Protect.<sup>10</sup> We call for strong human right standards particularly in places where the UK Government is providing financial support through export credit guarantees to UK companies operating in conflict or high risk areas.

*iv) Anvil Mining and DFID Funding in the DRC - (see: Annex "A" Case Study 4)*

35. Global Witness and RAID have repeatedly expressed concern relating to DFID's decision to work with Anvil Mining on a proposed Public Private Partnership (PPP) with USAID in Katanga.<sup>11</sup> Our concern was that DFID was directly or indirectly supporting a mining company which local prosecutors allege have been involved serious human rights violations, and which has so far refused to acknowledge any responsibility for its role. In 2006, the prosecutor at Katanga's Military Court in the DRC indicted three former expatriate employees of Anvil Mining Congo SARL for complicity in war crimes committed in Kilwa by providing transportation and logistical support to the Congolese Military.<sup>12</sup> In June 2007 the military tribunal acquitted the defendants. In reference to the trial, the UN High Commissioner for Human Rights, Louise Arbour, stated, "*I am concerned at the court's conclusions that the events in Kilwa were the accidental results of fighting, despite the presence at the trial of substantial eye-witness testimony and material evidence pointing to the commission of serious and deliberate human rights violations.*" To date, no prosecution has been started in the home states of the indicted employees.

36. Global Witness refers the Committee to the joint publication it issued with Rights and Accountability for Development (RAID) "*Kilwa trial: a denial of justice. A chronology, October 2004 - July 2007*"<sup>13</sup> which details the injustice faced by victims of the Kilwa Massacre during the DRC Military Trial in 2006-2007. **See: Recommendations Section paragraphs 53-54.**

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<sup>10</sup> The Times "*Lord Mandelson accused of weakening rule on ethical exports*" 13 April 2009 located at April <http://www.timesonline.co.uk/tol/news/politics/article6082922.ece> (last accessed 27 April 2009).

<sup>11</sup> We understand that DFID has subsequently discontinued its work with Anvil Mining.

<sup>12</sup> For details of the local prosecutor's allegations see:

[http://www.globalwitness.org/media\\_library\\_detail.php/560/en/kilwa\\_trial\\_a\\_denial\\_of\\_justice](http://www.globalwitness.org/media_library_detail.php/560/en/kilwa_trial_a_denial_of_justice); it should be noted that Anvil Mining Congo SARL is a subsidiary of Canadian/Australian Anvil Mining Limited. A holding company for Anvil is located in the UK.

<sup>13</sup> [http://www.globalwitness.org/media\\_library\\_detail.php/560/en/kilwa\\_trial\\_a\\_denial\\_of\\_justice](http://www.globalwitness.org/media_library_detail.php/560/en/kilwa_trial_a_denial_of_justice)

v) 'Undue Diligence' and UK-registered financial institutions - (see: Annex "A" Case Study 5)

37. There are currently no laws in place that require 'due diligence' vis-à-vis the provision of financial services to human rights violators nor guidelines specific to conflict and high risk areas. Although not specifically addressed by Professor Ruggie's framework, the UK Government should clarify the human rights obligations of UK-registered financial Institutions.
38. This need for clear guidelines is underscored by the Apartheid Alien Tort Claims case currently being litigated in the United States. It is alleged that the defendants, including Deutsche Bank, Citibank and Barclays Bank "...actively and willingly collaborated with the South African government to perpetuate the repressive, race-based system of apartheid".<sup>14</sup> Although defendants deny the charge, the case is still proceeding through the courts.
39. Furthermore, Global Witness has uncovered evidence that Citibank and Deutsche Bank, both of which have a substantial presence in the UK with London-based headquarters, have facilitated and enabled other forms of human rights abuses to occur in the past: a) Citibank facilitated the funding of two vicious civil wars in Sierra Leone and Liberia by enabling the warlord Charles Taylor, now on trial for war crimes in The Hague, to loot timber revenues. Citibank has a head office in the UK.<sup>15</sup> b) Deutsche Bank assisted the late President Niyazov of Turkmenistan, a notorious human rights abuser, to keep billions of dollars of state gas revenues under his personal control and off the national budget.
40. The UK Government should take a lead in making reforms to the financial regulatory system to prevent financial institutions from becoming complicit in human rights violations in conflict and high risk areas. **See Recommendations Section paragraph 56.**

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<sup>14</sup> Global Policy Forum (May 13, 2008) located at: <http://www.globalpolicy.org/intljustice/atca/2008/0513apartheid.htm>

<sup>15</sup> See: Global Witness's report, "Undue Diligence: How banks do business with corrupt regimes," 2009 located at [http://www.globalwitness.org/media\\_library\\_detail.php/735/en/undue\\_diligence](http://www.globalwitness.org/media_library_detail.php/735/en/undue_diligence)



## Recommendations calling for UK Government action

### 1) **UK Government - Action at the international level**

41. The UK Government should support calls for a UN Secretary General's report that examines the impact of natural resource exploitation and trade on human rights in conflict and post-conflict settings, including the lessons that can be learned and the ways in which existing standards of conduct for corporate and state actors may be strengthened.<sup>16</sup>

### 2) **UK Government - Regulatory actions at the national level**

42. The UK Government should enforce and compel compliance around minimum legal standards, including the legal risks identified in the *Red Flags* document published by FAFO and International Alert.<sup>17</sup> This document successfully synthesises legal wrongs which Global Witness has investigated in our own work. It captures nine liability risks for companies to be aware of when operating in conflict or high-risk areas. These represent a threshold and are based on legal breaches sourced from both national and international legal systems.

#### a) *Enforce existing laws and legal obligations*

43. Proactive action requires that the UK Government enforce current laws that favour investigating and prosecuting human rights abuses stemming from corporate activities in conflict and high risk areas. This will require that domestic criminal investigators and legal practitioners be more aware, receptive, and better trained to take up these cases. For example, the UK Government can call on legal experts to: draw out (in practical terms) the elements required for establishing: i) the war crime of pillage (*i.e.* theft of property affecting human rights during armed conflict) or ii) the facilitation of state looting either during or after a war, in UK courts.

44. The UK Government should focus on improved enforcement and prosecution of individuals and companies that violate UN Chapter VII sanctions. The UK Government should recognize these as principles of international law and prioritize their application. This requires that the UK Government actively investigate UK companies identified by the UN, and report to the UN Sanctions Committee any companies that fall within the criteria of UN Security Council Resolutions.

#### b) *Create new laws that apply extra-territorially in conflict and high risk areas*

45. The UK Government should introduce legislation that requires companies that source natural resources produced in conflict or high risk areas – for example cassiterite, coltan, wolframite, and gold from eastern DRC – to ascertain the date of extraction and location where the minerals are produced.

46. The legislation should require that UK companies operating in or buying from conflict or high risk areas conduct sufficient due diligence in their supply chains to ensure that they do not commit or contribute to human rights abuses, or the

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<sup>16</sup> In June 2007 the UN Security Council convened a first ever thematic debate on natural resources and conflict and called for more international action to address the issue. The Belgian government has since proposed that the UN General Assembly (UNGA) convenes a debate on the same topic. The immediate objective would be a UNGA resolution calling for a UN Secretary General's report.

<sup>17</sup> The FAFO and International Alert, *Red Flags* document states that Red Flags exist when actions result in: displaced peoples; forced labour; the handling of questionable assets; making illicit payments; engaging with abusive security forces; trading goods in violation of UN international sanctions; providing the means to kill; and the financing of crimes.



facilitation of state looting and continuation of bad governance. This obligation extends to a company's supply chain, especially where the company is in a position to influence any abusive human rights practices used by them.

47. This will require that the UK Government also be able to assess the level of due diligence carried out by a company operating in these areas.

### **3) *UK government - Policy measures at the national level***

48. In addition to regulation, the UK should adopt a series of policy and due diligence measures, and issue public statements to minimize UK corporate related human rights abuses.

#### *a) Proactive policy measures*

49. The UK Government should take proactive steps to clarify expectations and principles relevant to business; to identify indicators to trigger alerts with respect to companies operating in conflict affected areas. This will require that the UK Government review and condense into one document all human rights principles that currently apply to UK companies operating in conflict areas. The UK Government should evaluate and determine the effectiveness of these principles and further develop them. These principles should include the nine Red Flags as a basis for developing higher standards. This synthesis should act as a framework of expectations for registered companies when operating in conflict areas.

50. The Government should strengthen, formalize and monitor the implementation of existing voluntary codes such as the OECD Guidelines. The Government should ensure that companies comply with these human rights standards. The UK should be prepared to sanction those companies that fall below these standards, whether intentionally or otherwise. The UK Government should uphold final statements made by the UK NCP and take steps to ensure that they are brought to the attention of all arms of government.

51. The UK should make use of tools available to the government in exercising leverage over companies breaching human rights. As one method, the Government should recommend that, when appropriate, their public financial agencies divest from companies that are found to violate human rights standards. To achieve this, the Government should replicate and customise current best practice models such as the Norway Pension Fund. In addition, the Government should strengthen the human rights components of the OECD Guidelines, which are currently very general.

52. As mentioned previously in this submission, the UK Government should make more effective use of the ECGD by requiring that they explicitly state that human rights are operational principles applicable to companies seeking financial support and insist that red flags are adhered to as minimum criteria for insurance. The UK Government should act proactively and withdraw its support altogether, when companies are found to be committing or complicit in human rights abuses. Furthermore, UK Government can take steps to ensure that complicit companies cannot get support from other financial institutions.

#### *b) Due diligence within UK government departments*

53. The UK Government needs to ensure that officials in government agencies who promote foreign investments and provide development assistance are aware of the human rights situations in volatile areas and explicitly require that corporate human

rights related due diligence be performed. This should be assessed by the official before approval is provided. As one example, DFID should ensure that the PPPs in which it is involved, include businesses not alleged to be involved in human rights violations.

54. The UK Government needs to be able to provide meaningful on-the-ground advice to companies, for example, through their embassies in host countries, on whether or not they should continue to conduct business in conflict or high risk areas or how they should manage human rights risks. Professor Ruggie recently stated that “the OECD has developed a generic risk-assessment tool for companies operating in weak governance zones, but what companies need is real-time information and advice.”<sup>18</sup>

*c) Public warnings*

55. The UK Government should adopt and express a ‘no-go’ position where it is determined that direct or indirect violations of human rights cannot be mitigated by a UK-registered company. In these instances the UK should take a public position stating its reasons for concern and calling for companies to cease economic activity until the human rights conditions improve. This would be short of sanctions, but can be helpful in some cases. The UK has already used this technique on an ad hoc basis, whereas a more systematic approach is necessary.

**4) *UK Government – Guidelines and integration of human rights benchmarks for financial institutions***

56. Calling for clear guidance to be given to UK-based financial institutions and requiring that minimum human rights standards be integrated into all their business with companies that operate in conflict or high risk areas. The UK Government can specifically engage in the following:
- a. Require that commercial banks integrate Red Flags (i.e. minimum legal standards) into all dealings with companies that operate in conflict areas. If banks have a client operating in a conflict or high risk area, they should be required to undertake enhanced due diligence, using the Red Flags’ model to identify potential abuses, and then to avoid doing business if risks were identified.
  - b. Ensure that their own credit agencies operate on the same model and use their leverage as donors to the international financial institutions to press for them to do the same.
  - c. Engender a changed culture of ‘due diligence’ - banks should only take the business if they have identified that the ultimate beneficiary is not a known human rights violator or a key government official or family member associated in state looting.

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<sup>18</sup> “Prepared Remarks by SRSG John G. Ruggie Public Hearings on Business and Human Rights Sub-Committee on Human Rights European Parliament” (Brussels, 16 April 2009).

- d. Ensure that new global rules are put in place to help banks avoid funds gained through the commission of human rights violations. Every country should produce full public online registers of the ultimate beneficial ownership of all companies and trusts under its jurisdiction, to help banks identify and avoid business with a human rights risk.

Submitted by Global Witness

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Gavin Hayman, Campaigns Director

## Annex "A" Case Studies to Global Witness' Submission

### Case Study 1: The Afrimex case brought before the UK NCP for the OECD Guidelines

Afrimex is a UK-registered company which operates in eastern DRC through the Congolese registered companies Société Kotecha and SOCOMI<sup>19</sup>, both based in Bukavu. In February 2007, Global Witness filed a complaint against Afrimex for breaches of the OECD Guidelines for Multinational Enterprises, in connection with its trade in minerals during the war in the Democratic Republic of Congo (DRC) from 1998.<sup>20</sup> The UK Government's National Contact Point (NCP) for the OECD Guidelines investigated the case and, in August 2008, published its final statement, upholding the majority of Global Witness's allegations. It concluded that Afrimex had failed to ensure that its trading activities did not support armed conflict and forced labour. A significant part of its conclusions rested upon the fact that Afrimex had not exercised sufficient 'due diligence' to its supply chain, and that some of its suppliers - which included the *comptoirs* Muyeye and Olive - made payments to rebel groups (at that time, the RCD-Goma), thus contributing to the conflict.<sup>21</sup>

The NCP made a number of recommendations to Afrimex, relating, among other things, to the formulation, implementation and periodic review of a corporate responsibility policy which should take into account the human rights impact of the company's activities. By February 2009, the NCP had not received any information from Afrimex about the implementation of its recommendations.

Even after the OECD complaint was submitted in 2007, Global Witness gathered information that confirmed that Afrimex continued to trade in minerals from eastern DRC, albeit on a smaller scale than it had during the earlier years of the war. Furthermore, one of its suppliers in 2007 and 2008 was Muyeye, named by the UN Group of Experts as buying minerals produced by the rebel group FDLR (*Forces démocratiques pour la libération du Rwanda*), responsible for grave human rights abuses. Congolese government statistics list Afrimex as having imported 382.5 tonnes of cassiterite from Goma and 1,102.5 tonnes of cassiterite and 112.5 tonnes of wolframite from the *comptoirs* Muyeye and Bakulikira in South Kivu in 2007.<sup>22</sup> A sample of monthly reports for 2008 from the Congolese Government's Centre for Evaluation, Expertise and Certification (CEEC) show Afrimex as having imported 22.5 tonnes of cassiterite from Muyeye on 27 May 2008 and 45 tonnes from Bakulikira and 90 tonnes from Muyeye in June 2008.<sup>23</sup> Afrimex's mineral supplier and associated company SOCOMI, is listed as an officially licensed *comptoir* for cassiterite in South Kivu, having paid its licence fee of US \$9,000 for 2008.<sup>24</sup> Several other sources interviewed by Global Witness in mid 2008 confirmed that SOCOMI and Société Kotecha were still operating and handling minerals.<sup>25</sup>

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<sup>19</sup> Afrimex's mineral *comptoir*.

<sup>20</sup> See Global Witness, "Afrimex (UK) - DRC: Complaint to the UK National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises", 20 February 2007.

<sup>21</sup> Final statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Afrimex (UK) Ltd, 28 August 2008; Department for Business Enterprise and Regulatory Reform (BERR) press release "Mineral trade helped fund rebels", 28 August 2008.

<sup>22</sup> Rapport Annuel 2007, Division des Mines, North Kivu and South Kivu.

<sup>23</sup> CEEC, Rapport mensuel d'activités, mois de mai 2008 et mois de juin 2008, Antenne de Bukavu, Sud-Kivu.

<sup>24</sup> Performances des *comptoirs* du Sud-Kivu en 2008, Division des Mines, South Kivu, 19 July 2008.

<sup>25</sup> Global Witness interviews in Bukavu, 28 July and 3 August, and in Goma, 7 and 8 August 2008; report by a Uvira-based human rights organisation on illicit exploitation of minerals in the territoires of Uvira and Fizi, January-July 2008. For an explanation of the relationship between Afrimex, Société Kotecha and SOCOMI, see Final statement by

In January 2009, Global Witness wrote to Afrimex asking, among other things, for an update on the company's progress in implementing the NCP's recommendations.<sup>26</sup> In March 2009, Afrimex replied to the NCP, copying Global Witness, stating that it had stopped trading in minerals and that its last shipment left the DRC in or around the first week of September 2008.<sup>27</sup> This claim remains unsubstantiated by Global Witness and/or the UK Government.

Global Witness refers the Committee to paragraphs 21-27 of our submission.

## **Case Study 2: Amalgamated Metal Corporation (AMC) Group, THAISARCO and UN Group of Experts**

The December 2008 Final Report of the UN Group of Experts establishes links between THAISARCO and the *comptoir* Panju (based in eastern DRC), which has close links with the rebel group FDLR. Panju is one of the top five exporters of cassiterite, coltan and wolframite from South Kivu, according to 2007 Congolese Government statistics. The UN Group of Experts identified Panju as one of the *comptoirs* in Bukavu directly complicit in pre-financing *negociants*, who in turn work closely with FDLR. The Group further states that Panju was aware *"that certain mines they buy from are controlled by FDLR"* and that this was common knowledge within the mineral houses in South Kivu. The Final Report states that *"the Group has also obtained documents showing that all of Panju's minerals purchases were sold to the Thailand Smelting and Refining Company" (THAISARCO).*

In 2002, AMC were included in a list of companies considered by the previous UN Panel of Experts to be in violation of the OECD Guidelines.

DRC Government export records obtained by Global Witness confirm that THAISARCO purchased over 2,000 tonnes of cassiterite, coltan and wolframite from Panju in 2007. In December 2008, Global Witness wrote to THAISARCO and its UK-registered parent company AMC inquiring about their trade with the DRC and their 'due diligence' policies. In their replies, THAISARCO and AMC attempted to create a distance between their trade and the situation in eastern DRC by stating that they do not operate "directly" in the DRC. THAISARCO also claimed that *"most parties and commentators appear to be in agreement that the continued trade in minerals from DRC is fundamental to the well being of the artisanal mining communities "* and concluded: *"In summary, we believe we are providing a very valuable service to the DRC economy although we recognise that improvements in the visibility of the supply chain are both desirable and necessary."*

AMC PLC's Annual Report 2007 and Accounts state that the company's tin smelter is based in Thailand and operated by the Thailand Smelting and Refining Company, aka THAISARCO. It refers to THAISARCO as a *"principal subsidiary and operating unit"* of AMC PLC, and states that AMC PLC owns 75.25% of THAISARCO.

Company registration information and details relating to AMCO Investments Limited, Amalgamated Metal Corporation PLC, Amalgamated Metal Investment Holdings Limited, and British Amalgamated Metal Investments Ltd and their directors are publicly available and provide an explanation of the companies' corporate structure and shows how several of these entities share the same directors.

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the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Afrimex (UK) Ltd, 28 August 2008.

<sup>26</sup> Global Witness letter to Afrimex, 6 February 2009.

<sup>27</sup> E-mail from Ketan Kotecha, director of Afrimex, to Margaret Sutherland, NCP, copied to Global Witness, 2 March 2009.

Global Witness refers the Committee to paragraphs 28-32 of our submission.

### **Case Study 3: UK Government to prioritise human rights in gas exploration in Turkmenistan**

Turkmenistan possesses the fourth largest gas reserves in the world, and in light of recent concerns over Russia's control of the European gas supply through Ukraine and Belarus, western Europe has recently turned to Turkmenistan as a potential new source of energy. Frameworks for European investment have been signed and steps toward exploration are moving rapidly: in November 2007, the UK Government signed a protocol of intention with the Turkmen Government and in May 2008, the European Union (EU) signed a memorandum of understanding with the Turkmen government regarding energy co-operation. In April 2009, the European Parliament agreed to sign an interim trade agreement with Turkmenistan despite little progress in terms of human rights which it had previously requested. Though the parliament called for '*strict monitoring and regular reviews of developments in key areas of human rights,*' and for the agreement to be suspended '*if there is evidence that the conditions are not being met,*' there is concern that these calls are being taken seriously. In addition, companies have not answered calls from NGOs as to how these issues will be addressed. Any energy deals struck with the Turkmen Government must address issues relating to human rights and have strict provisions governing cooperative engagement. Yet the EU looks set to engage with the Turkmen Government with no preconditions.

Global Witness refers the Committee to paragraphs 33-34 of our submission.

### **Case study 4: Anvil Mining, the Kilwa Massacre and Accusations of Corporate Complicity**

Anvil Mining stated that it had no option but to agree to supply air and ground transport to the Congolese military (FARDC) in response to rebel activity in Kilwa in October 2004; the Congolese troops were involved in the deaths of around 100 unarmed civilians. In investigating events, the UN Mission for the DRC (MONUC) and human rights NGOs documented incidents of summary executions, torture, illegal detention and looting by the Congolese forces. In 2006, the prosecutor at Katanga's Military Court in the DRC decided to indict three former expatriate employees of Anvil Mining Congo SARL for complicity in war crimes. Anvil Mining Congo SARL is a subsidiary of Canadian/Australian Anvil Mining Limited. The trial in the DRC began in December 2006. In June 2007 the military tribunal acquitted all defendants in the Kilwa trial. In reference to the trial, the acting UN High Commissioner for Human Rights, Louise Arbour, stated, "*I am concerned at the court's conclusions that the events in Kilwa were the accidental results of fighting, despite the presence at the trial of substantial eye-witness testimony and material evidence pointing to the commission of serious and deliberate human rights violations.*" To date, no prosecution has been commenced in Canada or South Africa, the home states of the indicted employees, nor Australia. A holding company for Anvil is located in the UK.

Global Witness refers the Committee to paragraphs 35-36 of our submission.

## **Case Study 5: Oil, Deutsche Bank and natural resource revenues funding human rights violations**

Since the mid 1990s, Deutsche Bank has been the main banker for the Turkmen Government, widely regarded as one of the most corrupt and worst human rights abusing regimes in the world. Yet the bank has never properly answered questions regarding its commitments to upholding human rights in relation to these accounts. Though the accounts are nominally held by the Turkmen Central Bank, in actuality the autocratic president controls all money flows. This was most apparent under the now deceased former president, Saparmurat Niyazov, who maintained a US\$3 billion fund (The Foreign Exchange Reserve Fund or FERF) at Deutsche Bank which he used to build his ubiquitous personality cult, replete with golden palaces and statues of himself. A former Turkmen Central Bank Chairman has gone on record to say that only Niyazov could access money from this fund. Meanwhile 75% of government spending was done off-budget from other funds at Deutsche Bank, making it one of the most fiscally opaque countries in the world. There were calls by civil society for all accounts at Deutsche Bank to be frozen after Niyazov's death in December 2006, when the rightful constitutional acting president arrested. A new president, Gurbanguly Berdymukhamedov, was elected in February 2007, yet questions remain concerning what happened to the money in the FERF and to the control of Turkmenistan's revenues in general. These concerns are such that the European Bank for Reconstruction and Development EBRD currently refuses to lend to the Turkmen government. Though Deutsche Bank has confirmed that it holds Turkmen government accounts it has failed to comment on how it ensures that these revenues are not used for corrupt ends or to curb the human rights of the Turkmen people. It cites its commitments to the UN Global Compact, but again, has refused dialogue on how its commitments are implemented in this case. The UN Global Compact has no mechanism to ensure whether companies are truly living up to its ideals.

Deutsche Bank AG's UK Head Office is located at 1 Great Winchester Street, in London.

Global Witness refers the Committee to paragraph 37-40 of our submission.