



global witness

**Afrimex (UK)  
Democratic Republic of Congo**

**Complaint to the UK National Contact Point  
under the Specific Instance Procedure of the  
OECD Guidelines for Multinational Enterprises**

**20<sup>th</sup> February 2007**

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Attachments

## **I. Summary of complaint**

This complaint sets out breaches of the OECD Guidelines for Multinational Enterprises (“the OECD Guidelines”) by the British company Afrimex (UK) in relation to its activities in the Democratic Republic of Congo (DRC), for investigation and determination by the United Kingdom National Contact Point under the Specific Instance Procedure of the OECD Guidelines.

These breaches relate to Afrimex’s trade in minerals – specifically coltan and cassiterite<sup>1</sup> – in the DRC’s eastern provinces of North and South Kivu, two of the areas most directly affected by the armed conflict in that country since 1996.

This complaint is submitted by Global Witness, a London-based non-governmental organisation (NGO) that investigates the links between natural resource exploitation, conflict and corruption. Global Witness has been documenting the role of natural resources in fuelling the conflict in the DRC for several years and undertook first-hand research on the cassiterite trade in the DRC, including a field trip to North and South Kivu in February 2005.<sup>2</sup> The information in this submission is based in large part on Global Witness’s own research.

Global Witness’s findings, supplemented by evidence collected by other NGOs and journalists and testimony before the UK Parliament’s International Development Committee, demonstrate that Afrimex traded and has continued to trade minerals in a way that perpetuated the conflict in the DRC and was in clear breach of the OECD Guidelines. This submission describes how the company’s trading practices during the conflict directly contributed to funding armed rebel groups and grave human rights abuses in eastern DRC. It also highlights the fact that the company sourced some of its products from mines where forced labour was used and where miners worked in life-threatening conditions.

## **II. Introduction**

Two successive and exceptionally brutal wars in the DRC – the first beginning in 1996 and the second in 1998 – have devastated the country and its population. The war officially ended in 2002 and a transitional government was put in place in 2003. In July 2006, the Congolese people voted in the first democratic elections for more than 40 years and a new government was established in January-February 2007. Nevertheless, the country remains extremely volatile. Armed conflict, violence against civilians and grave human rights abuses have continued throughout and since the transitional period, particularly in the eastern provinces which maintain the most tenuous hold on peace.

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<sup>1</sup> Coltan is a mineral from which precious metals like columbium and tantalum are extracted. Tantalum is used in the manufacture of capacitors for electronic equipment such as mobile phones. Cassiterite is one of the most important ores of tin. Tin is then used in such processes as the coating of metals to prevent corrosion and the manufacture of circuit boards. Coltan and cassiterite are often found in the same locations in the DRC.

<sup>2</sup> The findings of Global Witness’s research on the cassiterite trade are contained in the report “Under-mining peace – Tin: the explosive trade in cassiterite in eastern DRC”, June 2005.

Throughout the conflict, the eastern provinces of North and South Kivu witnessed widespread killings, rape, war crimes and crimes against humanity, committed by members of the rebel group *Rassemblement congolais pour la démocratie-Goma* (RCD-Goma), which seized control of large parts of these provinces from 1998; other rebel groups, such as the *Forces démocratiques pour la libération du Rwanda* (FDLR) and the *mai-mai*; soldiers of the Congolese national army; and armies of neighbouring countries, such as Uganda and Rwanda, who supported different Congolese factions during the conflict. Violence and large-scale displacement continued into 2005 and 2006. By early 2007, initiatives designed to ensure longer-term stability, such as the integration of different armed groups into a single unified national army, remain incomplete and fraught with political and logistical difficulties. The quest for control of the DRC's vast mineral and other natural resources has been and remains a motivation for regional and local actors throughout and since the conflict.

A UN Panel of Experts ("the Panel") which investigated the networks involved in the illegal exploitation of natural resources during the war in the DRC found a great number of companies that it considered to have breached the OECD Guidelines. Explicit in the Panel's work was the expectation that respective national governments would hold companies to account for their actions in the DRC. The Panel's October 2002 report states clearly that countries which have signed up to the OECD Guidelines are "morally obliged to ensure that their business enterprises adhere to and act on the Guidelines". Furthermore, home governments "are complicit when they do not take remedial measures" in cases where enterprises based in their jurisdiction "abuse principles of conduct that they have adopted as a matter of law."<sup>3</sup> However, even though these governments have jurisdiction, they have shown little political will to investigate allegations that specific companies participated in illegal and destabilising commercial activities in the DRC. It is our hope that through the consideration of this and other submissions to National Contact Points, OECD members will fulfil their commitment to hold to account companies who have flouted the OECD Guidelines and offer meaningful guidance to companies who wish to conduct business in a manner which does not fuel conflict or human rights abuses.

### **III. Afrimex's activities in the Democratic Republic of Congo**

Afrimex (UK) is a privately-owned mineral trading company, registered in Wembley, United Kingdom (no. 01738800).<sup>4</sup> Afrimex operates in eastern DRC as *Société Kotecha*, a Congolese registered company based in Bukavu, South Kivu<sup>5</sup>. The two sole directors of Afrimex, Ketankumar (or Ketan) Kotecha and his wife, Didi Ketan Kotecha, are also the directors of *Société Kotecha*.<sup>6</sup>

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<sup>3</sup> Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo, S/2002/1146, 16 October 2002, paragraphs 177 and 178.

<sup>4</sup> UK Companies House.

<sup>5</sup> Global Witness report "Under-Mining Peace – Tin: the explosive trade in cassiterite in eastern DRC," June 2005, p. 23.

<sup>6</sup> UK Companies House.

As confirmed by Ketan Kotecha, Afrimex has been trading in eastern DRC since 1984.<sup>7</sup> The Kotecha family started trading activities in the DRC even earlier, in 1962.<sup>8</sup> Ketan Kotecha described Afrimex as a company that “has invested in eastern DRC, long, long before” the conflict.<sup>9</sup> However, the present complaint relates specifically to Afrimex’s trade in coltan and cassiterite during the conflict, in particular since 1998.

Throughout all stages of the conflict, Afrimex and its partners in the DRC have been major traders in resources controlled by rebel groups – the eastern provinces being under partial or complete rebel control throughout most of the conflict. The most dominant of these groups in North and South Kivu since 1998 was the RCD-Goma.

UN agencies and Congolese and international NGOs have documented in detail the role of natural resource exploitation as an engine of conflict in the DRC, particularly in the east. The price of resources like coltan and cassiterite experienced booms and busts, as various groups battled for control of the mining areas. Control and exploitation of these trades enabled the RCD-Goma to finance its crippling occupation of North and South Kivu - an occupation characterised by widespread human rights violations against the civilian population.<sup>10</sup>

#### *Taxation paid to a rebel group during the conflict*

Soon after August 1998, from the start of what is known in the DRC as the “second war”, the RCD-Goma began imposing taxation on commercial operators, including those trading in natural resources. From mid-1998 to November 2000, it imposed a US \$15,000 per year licence fee in addition to a tax estimated at 8% of the total value of exports on all coltan traders.<sup>11</sup>

Critically, for the period concerned, Ketan Kotecha, the director of Afrimex, confirmed that taxes were paid to RCD-Goma officials and not to the national government of the DRC.<sup>12</sup> In a letter to the Panel, he stated: “The [mineral exporting] licenses have been renewed every year by the authorities in place in Kinshasa until 1998 and thereafter in Goma.<sup>13</sup> We have been paying our taxes to the authorities in place and we have no means of verifying the proper use of the

<sup>7</sup> Corrected Transcript of Oral Evidence of Ketan Kotecha before the International Development Committee, Session on Conflict and Development: Peacebuilding and Post-Conflict Reconstruction, 4 July 2006. Response to Question 376.

<sup>8</sup> Corrected Transcript of Oral Evidence of Ketan Kotecha before the International Development Committee, 4 July 2006. Response to Question 375. See also letter from Ketan Kotecha, Afrimex (UK) Limited to Mr Melvin Holt, United Nations Expert Panel, 22 May 2003.

<sup>9</sup> Corrected Transcript of Oral Evidence of Ketan Kotecha before the International Development Committee, 4 July 2006. Response to Question 416.

<sup>10</sup> See Amnesty International and Human Rights Watch reports listed in Section VIII of this submission and enclosed extracts.

<sup>11</sup> International Peace Information Service (IPIS), “Supporting the War Economy in the DRC: European Companies and the Coltan Trade,” 2002, p. 11.

<sup>12</sup> Corrected Transcript of Oral Evidence of Ketan Kotecha before the International Development Committee, Session on Conflict and Development: Peacebuilding and Post-Conflict Reconstruction, 4 July 2006. Responses to Questions 390 to 395.

<sup>13</sup> The town of Goma, in North Kivu, served as the headquarters of the RCD-Goma.

taxes paid by us.”<sup>14</sup> During this period, Afrimex was the greatest trader in terms of volume, exporting 165,000 kg of coltan with a reported value of US\$ 2.475 million; it operated through the Société de Commercialisation des Minerais (SOCOMI), the ore marketing arm of Société Kotecha.<sup>15</sup> The total amount of taxes the company paid to the RCD-Goma would therefore have been significant.

In November 2000, the RCD-Goma imposed a monopoly on the coltan trade in the territories under its control in the form of the Société Minière des Grands Lacs (SOGIML). Under this regime, taxes of US\$ 10 per kilogram of coltan were imposed on all traders, with Afrimex and Société Kotecha continuing their trade of coltan.<sup>16</sup> This taxation enabled the RCD-Goma to finance its own military expenditures in its war against the national government.<sup>17</sup> The RCD-Goma did not channel this money into the development of regions under its control or use it to provide services or protection to the population; it simply extracted funds for its war efforts, while the population in the areas it controlled continued to be subjected to extreme poverty, violence and displacement. This was confirmed by the Panel which stated that of all the tax revenue collected by the RCD-Goma, “none...is used to provide public services.”<sup>18</sup>

### *Labour conditions*

With the collapse of the coltan market, trade in cassiterite became increasingly important, reaching a ten-year high price in 2004. Global Witness and other organisations have documented how the cassiterite trade followed the same trade routes as coltan and how its trade remained highly militarised, with its workers subject to ubiquitous predations by both rebel and government soldiers.<sup>19</sup> The predations were carried out in an environment of impunity and included extortion and illegal taxation of miners by military personnel, killings, intimidation, and forced mass displacement to gain control over valuable natural resources.<sup>20</sup> The informal mining sector is also marked by its poor working conditions and pay, with miners exposing themselves daily to the risk of death and serious injury in the mines and vulnerable to forced labour.

Export statistics from 2004 and early 2005 reveal that Afrimex was the second largest exporter of cassiterite from South Kivu, controlling more than 40% of the cassiterite from the province, while also buying minerals from mines in North Kivu. While Ketan Kotecha claimed that the minerals he traded all came from “genuine, legal, licensed sources,”<sup>21</sup> a representative of his own

<sup>14</sup> Letter from Ketan Kotecha, Afrimex (UK) Limited to Mr. Melvin Holt, United Nations Expert Panel, 23 May 2003.

<sup>15</sup> IPIS, “Central African Mineral and Arms Research Bulletin,” Volume 1, 14 June 2001; Initiative for Central Africa (INICA), “The Mining Economy in the Kivu and its Regional Implications,” July 2004.

<sup>16</sup> IPIS, “Supporting the War Economy in the DRC: European Companies and the Coltan Trade,” 2002, p. 10.

<sup>17</sup> Ibid.

<sup>18</sup> Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo, S/2002/1146, 16 October 2002, paragraph 89.

<sup>19</sup> Global Witness report “Under-Mining Peace – Tin: the explosive trade in cassiterite in eastern DRC,” June 2005, p. 14-16 and Channel 4 investigation, “Congo’s Tin Soldiers,” 30 June 2005.

<http://www.channel4.com/news/special-reports/special-reports-storypage.jsp?id=301&parasStartAt=0>

<sup>20</sup> Ibid, p. 11.

<sup>21</sup> Corrected Transcript of Oral Evidence of Ketan Kotecha before the International Development Committee, 4 July 2006. Response to Question 376.

company admitted to Global Witness that one cannot know the origin of the minerals as they come various locations, in small quantities.<sup>22</sup>

During his testimony before the UK Parliament's International Development Committee in July 2006, Ketan Kotecha insisted that the mines that supplied Afrimex did not use forced labour and that the company's suppliers had provided assurances to that effect.<sup>23</sup> However, Channel 4's award-winning investigation, "Congo's Tin Soldiers", documented the plight of adult and child miners and porters in the Walikale region, and Bisiye mine in particular, who were forced at gunpoint by government soldiers to carry heavy sacks of cassiterite.<sup>24</sup> Afrimex admitted that it profited from coltan and cassiterite mined around Walikale, but is wilfully ignorant of the insufferable working conditions of those forced to labour there.<sup>25</sup> When asked about the labour conditions of the workers who supplied his company with cassiterite and coltan, Ketan Kotecha replied: "Yes, salary structures are very low but it's better that miners and porters earn something than nothing. If I didn't do this someone else would. I am not here as some kind of moral saviour."<sup>26</sup>

#### **IV. Background to the UN Panel of Experts**

Pursuant to a presidential statement on 2 June 2000<sup>27</sup>, the UN Security Council requested the establishment of a Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo (the Panel). The Panel produced several reports, the first of which was released in April 2001.<sup>28</sup> This report concluded that "the conflict in the Democratic Republic of Congo has become mainly about access, control and trade of five key mineral resources," one of which was coltan.<sup>29</sup> It also concluded that "the role of the private sector in the exploitation of natural resources and the continuation of the war has been vital... Companies trading minerals, which the Panel considers to be 'the engine of the conflict in the Democratic Republic of the Congo' have prepared the field for illegal mining activities in the country."<sup>30</sup>

The next Panel report, published in October 2002, continued to emphasise the fact that "the most important element in effectively halting the illegal exploitation of resources in the Democratic Republic of the Congo relates to the political will of those who support, protect and benefit from the networks."<sup>31</sup> Annex III of the report included a list of 85 companies considered by the Panel

<sup>22</sup> Global Witness interview with Société Kotecha representative, Bukavu, February 2005.

<sup>23</sup> Corrected Transcript of Oral Evidence of Ketan Kotecha before the International Development Committee, 4 July 2006. Response to Question 397.

<sup>24</sup> Channel 4 investigation, "Congo's Tin Soldiers," 30 June 2005.

<sup>25</sup> Ibid and Global Witness, "Under-Mining Peace— Tin: the explosive trade in cassiterite in eastern DRC," June 2005, p. 23.

<sup>26</sup> Ibid.

<sup>27</sup> UN S/PRST/2000/20.

<sup>28</sup> Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo, S/2001/357, 12 April 2001.

<sup>29</sup> Ibid. Paragraph 213.

<sup>30</sup> Ibid. Paragraph 215.

<sup>31</sup> UN Panel of Experts Report S/2002/1146, 16 October 2002, Paragraph 152.

to have violated the OECD Guidelines. Twelve of these were UK companies. The report did not recommend particular follow-up actions to be taken against them by the Security Council.<sup>32</sup>

The UN Security Council's next step was the adoption of Resolution 1457 ("the Resolution"), which condemned the illegal exploitation of the DRC's natural resources, expressed its concern about the way its plunder fuelled the conflict, and demanded that all states act so as to end these illegal activities.<sup>33</sup> The Resolution included a recommendation that the Panel's mandate be extended so that it might "verify, reinforce and, where necessary, update the Panel's findings, and/or clear parties named in the Panel's previous reports, with a view to adjusting accordingly the lists attached to these reports."<sup>34</sup> Companies mentioned by the Panel were asked to express their reactions to the Panel reports and the Panel was requested "to provide information to the Organisation for Economic Co-operation and Development (OECD) Committee on International Investment and Multinational Enterprises and to the National Contact Points for the OECD Guidelines for Multinational Enterprises in the States where business enterprises listed in annex 3 of the last report as being allegedly in contravention of the OECD Guidelines are registered, in accordance with United Nations established practice."<sup>35</sup>

The Resolution went on to describe the procedures necessary for national governments to carry out the requisite investigations of the Panel report claims, requiring the Panel "to establish a procedure to provide to Member States, upon request, information previously collected by the Panel to help them take the necessary investigative action" and advocated that states should "conduct their own investigations, including as appropriate through judicial means, in order to clarify credibly the findings of the Panel."<sup>36</sup>

The Panel then conducted a dialogue and exchange of information with the companies named, to clarify the problems mentioned by the Panel. Replies from all the parties who submitted reactions were published in an addendum to the Panel report of 20 June 2003.

The final report of the Panel was presented to the UN Secretary General in October 2003 and recommended a course of action pursuant to dialogue with the concerned enterprises.<sup>37</sup> The enterprises were classed in five categories as follows:

- Category I: Resolved No Further Action Required
- Category II: Resolved Cases Subject to NCP Monitoring Compliance
- Category III: Unresolved Cases Referred to NCP for Updating or Investigation
- Category IV: Pending Cases with Governments for Individuals and Companies
- Category V: Parties that did not React to the Panel's Report<sup>38</sup>

Finally, following the October 2003 Panel report, states were urged to conduct their own investigations "on the basis in particular of information and documentation accumulated by the

<sup>32</sup> UN S/2002/1146, Paragraph 177.

<sup>33</sup> UN Security Council Resolution 1457, 24 January 2003, Paragraphs 2-4.

<sup>34</sup> Ibid., Paragraph 9.

<sup>35</sup> Ibid., Paragraph 14.

<sup>36</sup> Ibid., Paragraph 12 and 15.

<sup>37</sup> UN S/2003/1027.

<sup>38</sup> Ibid. Annex I.

Panel during its work and forwarded to governments.”<sup>39</sup> This wording supports the principle that the national governments home to these enterprises had a responsibility to investigate these allegations further and that they could draw on information available not only from the Panel but also from other sources.

## V. Afrimex and the UN Panel of Experts

Afrimex was first mentioned in the Panel’s April 2001 report as a company of concern, as it was one of a number of companies exporting minerals from eastern DRC via Rwanda during the conflict.<sup>40</sup> Afrimex was then listed in Annex III of the October 2002 Panel report, as it was considered to be in violation of the OECD Guidelines.

After receiving responses from some of the companies cited, the October 2003 Panel report classified Afrimex in Category I, a “resolved” case that required no further action. A “resolved” case “signifies that there are no current outstanding issues, the original issues that led to their being listed in the annexes having been worked out to the satisfaction of both the Panel and the companies and individuals concerned”. However, the report stated that this categorisation did not invalidate the Panel’s earlier findings about the activities of these actors.<sup>41</sup>

As a result of the lack of transparency in the process of dialogue and justification between the Panel and the companies concerned, it is unclear what evidence was provided to the Panel to resolve Afrimex’s case and on what basis the Panel declared the case “resolved”. On 22 May 2003, Afrimex’s director Ketan Kotecha wrote a letter to the Panel summarising the main points of a meeting between Afrimex and members of the Panel and requesting that Afrimex’s name be removed from the annex of the Panel’s final report. None of the points contained in this letter can reasonably be considered to resolve the Panel’s concerns. On the contrary, the letter confirms that Afrimex had been paying taxes to officials of the RCD-Goma and that it was unable to verify the proper use of these taxes.<sup>42</sup>

Overall, none of Afrimex’s activities that fell within the purview of the Panel had altered in any way from the time that the Panel first identified them as causes for concern. Nor had there been any significant change in the fundamental circumstances of the exploitation of natural resources in eastern DRC, as the RCD-Goma continued to control mines such as those in the region of Walikale in North Kivu, until December 2004. Widespread violence and grave human rights abuses also continued in the area during and since this period.

Despite these events and the context of armed conflict in which they were operating, the directors of Afrimex confirmed that they did not see fit to stop or modify their activities, in particular their trade in minerals in rebel-controlled territory.<sup>43</sup> In 2000, a report by the

<sup>39</sup> Security Council Presidential Statement S/PRST/2003/19, 19 November 2003.

<sup>40</sup> UN Panel of Experts Report S/2001/357 Annex I.

<sup>41</sup> UN S/2003/1027 Paragraph 23.

<sup>42</sup> Letter from Ketan Kotecha, Afrimex (UK) Limited to Mr. Melvin Holt, United Nations Expert Panel, 23 May 2003.

<sup>43</sup> Corrected Transcript of Oral Evidence of Ketan Kotecha before the International Development Committee, 4 July 2006. Response to Question 377.

International Peace Information Service (IPIS) alleged that Société Kotecha stopped its coltan trading activities in eastern DRC due to the imposition of a monopoly on the coltan trade by the RCD-Goma.<sup>44</sup> However, more recent confirmations of the relationship between RCD-Goma and Afrimex in themselves merit further investigation as the directors of Afrimex, to this day, do not appear to find fault with trading in a context where they were effectively funding armed groups responsible for grave human rights abuses.

In his communications with the UK Parliament's International Development Committee, Ketan Kotecha stated that the Afrimex case was placed in the "resolved" category by the Panel "because it was not a business that had simply appeared at the time of the conflict but, rather, had done business in the Congo for many years and had made a positive contribution to local communities."<sup>45</sup> However, the matter of concern is not the length of Afrimex's activities in the DRC, but the ways in which these activities contributed to the conflict and affected the local population. As demonstrated below, even if one were to accept the Panel's concerns as resolved, which the evidence does not bear out, there are additional violations of the OECD Guidelines that occurred after the expiry of the Panel's mandate.

## **VI. Global Witness submission and recommendations**

### *i. Inadequacy of the Panel process*

As illustrated in this submission and other documents, the process of resolution of cases cited by the Panel was seriously flawed: it left many questions unanswered and gave the impression that certain cases, such as that of Afrimex, had been satisfactorily resolved when, in fact, many of the specific concerns raised by the Panel had not been addressed.<sup>46</sup> As a result of the inadequacy of this process, and the misleading nature of the categorisation, little or no action was taken by governments to launch in-depth investigations into the allegations and hold the companies concerned to account.

Global Witness submits that the Panel's investigation into Afrimex's activities in the DRC and its subsequent categorisation of the Afrimex case as "resolved" were neither comprehensive nor determinative. As a result, further investigation and action is still required. This position is supported by evidence presented in this submission, including information gathered by Global Witness on Afrimex's trading activities during the conflict in eastern DRC and the Afrimex director's statements in response to the report of the Panel and questioning by the UK Parliament's International Development Committee as recently as July 2006.

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<sup>44</sup> IPIS, "Supporting the War Economy in the DRC: European Companies and the Coltan Trade," January 2002. Global Witness has been unable to confirm whether Afrimex stopped trading. The only official statement available on this point is that of Afrimex's director who stated, in response to Question 377 at the International Development Committee hearing, that "at that stage we did not think it was necessary to stop"; it is unclear to which time period he was referring.

<sup>45</sup> Letter to the Chairman of the International Development Committee from Mr Ketan Kotecha, Afrimex (UK) Ltd, 25 July 2006.

<sup>46</sup> For a more detailed critique of the UN Panel resolution process, see RAID's "Unanswered Questions: Companies, Conflict and the Democratic Republic of Congo," May 2004, pages 11-18.

## *ii. Breaches of the OECD Guidelines*

Global Witness submits that Afrimex has breached the OECD Guidelines and that by doing so, it contributed to the conflict and to large-scale human rights abuses against populations living in the affected areas of eastern DRC.

Due to the length of time that the company has been active in eastern DRC, it is impossible that Afrimex's directors would have been unaware of the political and economic context, the gravity of the conflict and the implications of illegal funds transfers to armed rebel groups (in this case, the RCD-Goma) which Ketan Kotecha admitted making. According to the Panel's October 2002 report, "no coltan exits from the eastern Democratic Republic of the Congo without benefiting either the rebel groups or foreign armies"<sup>47</sup> and in so doing, contributes to the continuation of conflict. The scale of the conflict and the widespread use of violence against civilians in mining areas by all parties, including the RCD-Goma, were documented by numerous national and international NGOs, journalists and UN bodies<sup>48</sup> and widely publicised at the time and throughout the conflict; these included periodic outbreaks of violence in Bukavu, the very town where Société Kotecha is based.

Global Witness submits that by continuing to trade in minerals in these circumstances throughout the conflict, Afrimex was in breach of the following principles of the OECD Guidelines:

### General Policies

II.2. *Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.*

Afrimex paid taxes to an armed group (the RCD-Goma) that was engaged in an armed conflict against the Congolese government and had a well-documented record of committing serious human rights abuses against the civilian population in eastern DRC. As demonstrated by reports by international human rights NGOs and other sources,<sup>49</sup> the RCD-Goma continued carrying out grave human rights abuses, including massacres, sexual violence, arbitrary detention, torture and recruitment of child soldiers throughout the conflict.

II.1. *Contribute to economic, social and environmental progress with a view to achieving sustainable development.*

Afrimex recognised the authority of an armed rebel group (the RCD-Goma) and financed the group through tax payments to the detriment of the national unity of the country. This served to prolong the conflict and weaken the bases of social and economic development. The RCD-Goma did not use the profits from the mineral trade or taxes or other payments received from companies such as Afrimex to develop the areas under its control. On the contrary, these payments perpetuated the conflict by boosting the capacity of the RCD-Goma to purchase

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<sup>47</sup> UN S/2002/1146, paragraph 80.

<sup>48</sup> See sources listed in Section VIII of this submission.

<sup>49</sup> See in particular Amnesty International and Human Rights Watch reports on human rights abuses by the RCD-Goma, listed in Section VIII of this submission, and enclosed extracts.

weapons and military supplies. They also contributed more generally to strengthening the rebel group and enabling it to operate.

As documented by Global Witness, large quantities of cassiterite from eastern DRC were exported through neighbouring Rwanda without being recorded or taxed by the Congolese authorities.<sup>50</sup> The Congolese population did not benefit from the significant revenues which should have been declared from these exports and which could have been channelled into development.

II.10. *Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.*

There are grounds to suspect that Afrimex breached this Guideline: Afrimex did not give any indication in any of its responses or interviews cited in this submission that it had encouraged its suppliers to apply principles compatible with the OECD Guidelines or that it conducted due diligence to ensure that its suppliers were complying with the OECD Guidelines. On the contrary, Afrimex's own disregard for the OECD Guidelines would indicate that it made no effort to ensure that its suppliers did so. Ketan Kotecha's comments on the labour conditions of mine workers, cited in Section III of this submission, further demonstrate this lack of concern.

II.11. *Abstain from any improper involvement in local political activity.*

By paying taxes regularly to the RCD-Goma, Afrimex contributed to supporting an armed opposition group in the DRC.

### Employment and Industrial Relations

- IV.1.b *Contribute to the effective abolition of child labour.*
- IV.1. c *Contribute to the elimination of all forms of forced or compulsory labour.*
- IV.4. b *Take adequate steps to ensure occupational health and safety in their operations.*

Afrimex profited from minerals sourced from mines with unacceptable health and safety practices, including life-threatening conditions, use of forced labour and child labour, as illustrated vividly in the 2005 Channel 4 television investigation "Congo's Tin Soldiers". Global Witness is not aware that Afrimex took steps to improve or protest against the conditions in the mines from which it was buying minerals, to conduct due diligence or to seek alternative suppliers whose practices conformed to international labour standards.

### Combating Bribery

Afrimex's tax payments to the RCD-Goma could constitute a breach of the following principle of the OECD Guidelines: "Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper

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<sup>50</sup> Global Witness report "Under-Mining Peace – Tin: the explosive trade in cassiterite in eastern DRC," June 2005.

advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage.” More specifically:

VI. 2. *Ensure that remuneration of agents is appropriate and for legitimate services only.*

Afrimex’s tax payments to the RCD-Goma cannot be considered appropriate in view of the fact that the RCD-Goma was an armed group fighting the Congolese government. Nor can the RCD-Goma agents be considered to have provided “legitimate services” in exchange for this remuneration.

VI. 6. *Not make illegal contributions to candidates for public office or to political parties or to other political organisations.*

The RCD-Goma evolved from a rebel group into a political party. In either capacity, Afrimex’s payments to the group can be considered in breach of this guideline.

## **VII. Conclusion**

As recently as July 2006, statements by Afrimex’s director indicated a continuing failure to recognise the negative impact of his company’s activities in eastern DRC during the conflict.<sup>51</sup> Despite concerns expressed by the Panel, by NGOs and by members of the International Development Committee about the impact of its operations in eastern DRC, the company claims to still be unaware of the OECD Guidelines and their implications for its commercial activities.<sup>52</sup>

If the DRC’s attempts to move towards peace and democracy are to be successful in the aftermath of the 2006 elections, it is essential that the country’s natural resources cease to be a catalyst for conflict and begin to be exploited in a transparent and sustainable manner. For as long as some former combatants still threaten the process of stabilisation, measures to prevent those bent on violence from accessing profits from the country’s natural resources should be a national and an international priority.

Economic operators have a critical role to play in breaking those links and have the responsibility to adopt practices which do not fuel human rights violations and the use of violence against unarmed civilians. The responsibility for ensuring that they do so rests with governments, who should investigate allegations of breaches by companies from their country and hold these companies to account. By failing to do so, these governments are undermining the effectiveness of the OECD Guidelines.

Unless and until governments start holding rogue companies to account, the OECD Guidelines shall remain a meaningless instrument and companies can continue to fuel conflict and human rights abuses with impunity. In the case of the DRC, all the circumstances which gave rise to

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<sup>51</sup> Corrected Transcript of Oral Evidence of Ketan Kotecha before the International Development Committee, 4 July 2006.

<sup>52</sup> Ibid. Response to Question 421.

concerns about the role of certain companies during the conflict remain in place. If remedial and preventive action is not taken, it is highly likely that these problems could be repeated. The case presented in this submission therefore has immediate and continuing resonance beyond the specific period and events described here.

By acting on this case, the UK Government would be demonstrating a resolve to laying the bases for more responsible corporate practices in the DRC in the longer term and ultimately, seeking a lasting peace in the country.

It is our expectation that the present submission will be considered under the new, revised procedures for submitting complaints to the NCP set up in August 2006 by the Department of Trade and Industry (DTI) in conjunction with the Foreign and Commonwealth Office (FCO) and the Department for International Development (DFID)<sup>53</sup> and that if the NCP concludes, on the basis of the information available, that Afrimex has breached the OECD Guidelines, it will issue a public statement to that effect. The successful implementation of these new procedures soon after their establishment would be proof of the UK Government's revived commitment to holding to account British companies alleged to be in breach of the OECD Guidelines and to enhancing the longer-term effectiveness of the OECD Guidelines.

### **VIII. Sources and documentation**

*Documents marked with \* are enclosed with this submission.*

\* Global Witness report, "Under-mining peace. Tin: the explosive trade in cassiterite in eastern DRC," June 2005.

\* Channel 4 investigation, "Congo's Tin Soldiers," 30 June 2005.

\* Corrected Transcript of Oral Evidence before the International Development Committee, Session on Conflict and Development: Peacebuilding and Post-Conflict Reconstruction, 4 July 2006.

\* Letter from Ketan Kotecha, Afrimex (UK) Limited to the Chairman of the International Development Committee, 25 July 2006.

\* Letter from Ketan Kotecha, Afrimex (UK) Limited to Mr. Melvin Holt, United Nations Expert Panel, 23 May 2003.

Global Witness interview with Société Kotecha representative, Bukavu, February 2005.

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<sup>53</sup> Government response to the consultation on the UK National Contact Point's promotion and implementation of the OECD Guidelines for Multinational Enterprises, published by the DTI on 13 July 2006. Annex 2 outlines the commitments by the government or the NCP under the new procedure.

Reports of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC, S/2001/357 (April 2001), S/2001/1072 (November 2001), S/2002/565 (May 2002), S/2002/1146 (October 2002) and S/2003/1027 (October 2003).

\* (extracts enclosed) Amnesty International reports “Democratic Republic of Congo: War against unarmed civilians”, November 1998; “Democratic Republic of Congo: Killing human decency”, May 2000.

\* Amnesty International news release “Democratic Republic of Congo: Massacre of civilians continues unabated in the east”, January 2000.

\* (extracts enclosed) Human Rights Watch reports “Eastern Congo ravaged: killing civilians and silencing protest”, May 2000; “Reluctant recruits: children and adults forcibly recruited for military service in North Kivu”, May 2001; and “The war within the war: sexual violence against women and girls in eastern Congo”, June 2002.

Report of Belgian Senate investigation (Rapport fait au nom de la Commission d’enquête «Grands Lacs» par MM Colla et Dallemagne, session de 2002-2003, 2-942/2), 20 February 2003.

International Peace Information Service (IPIS), “Supporting the War Economy in the DRC: European Companies and the Coltan Trade,” January 2002.

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