



global witness

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Rt Hon Michael Wills MP
Minister of State
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Rt Hon David Miliband MP
Secretary of State for Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
King Charles Street
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SW1A 2AH

Dear Sirs

Re: UK Government Response to the Joint Committee on Human Rights' First Report of Session 2009-10: *Any of our business? Human rights and the UK private sector*

Global Witness¹ is concerned by the UK Government's weak commitment to addressing serious human rights abuses contributed to by UK registered and domiciled companies (UK companies) operating in conflict affected areas. As evidenced by its response to the report issued by the Joint Committee on Human Rights (JCHR) entitled *Any of our business? Human rights and the UK private sector*², the UK Government refuses to take seriously concerns relating to the harm that UK companies are having on human rights abroad and continues to lack a coherent strategy for effectively dealing with these issues.

Global Witness reaffirms its position that the UK Government has been slow, or has failed to act with regard to UK companies trading in conflict affected areas, in particular, in the Democratic Republic of Congo (DRC). We believe that greater regulatory and policy measures are required that have an extra-territorial effect and that apply to UK companies operating in these places.

¹ Global Witness is a non-governmental organisation 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.

² Global Witness welcomed the JCHR report's (issued 16 December 2009) recommendations relating to conflict areas and called on the UK Government to take immediate action against UK companies contributing to human rights abuses overseas. See: Global Witness press release "*Global Witness urges government to act on human rights report*" of 16 December 2009.

It is not enough that the UK Government has endorsed the Voluntary Principles on Security and Human Rights and the OECD Guidelines for Multinational Enterprises (OECD Guidelines). As demonstrated in our submission to the JCHR dated 5 May 2009,³ voluntary initiatives must be supplemented with accountability mechanisms that ensure compliance and provide for significant consequences such as criminal sanctions where necessary.⁴

Inadequacies of the UK Government's response

Failure to comply with obligations arising from UN sanctions on the DRC

On page 40 of its response, the UK Government specifically references Global Witness' call for the UK Government to put forward UK entities and individuals to the United Nations (UN) Sanctions Committee who were found to be "...funding illegal armed groups" in violation of UN Security Council Resolution 1857 (2008).⁵

Acting on the basis of UN Resolution 1857 and pursuant to findings made through our own investigations as well as by the UN Group of Experts, Global Witness made its request to the UK Government on 24 March 2009. Both the UN Group of Experts reports issued in December 2008 and November 2009 cited specific UK companies as funding "illegal armed groups" through the purchasing of minerals supplied by *comptoirs* (export traders) reported to be financing the *Forces démocratiques de libération du Rwanda* (FDLR).⁶

In its response, the UK Government states that it does not accept Global Witness' position that certain UK companies should be put forward to the UN Sanctions Committee for consideration. It then goes on to state that it "will not hesitate to support sanctions against any person or company, including UK-based companies or individuals, where there is sufficient evidence to do so."

Until today, the UK Government has never advised on the process undertaken, if any, or evidence used to discredit our allegations or the findings of the UN Group of Experts. Without disclosing on what basis its assessment was made, the UK Government's assertion is without substance and suggests a lack of willingness to act. As established by law, the obligation for the UK Government to take action includes a positive legal responsibility to undertake fact-finding, criminal investigation and to provide redress.⁷

Implicit contradiction regarding UK Government position

On page 41, the UK Government states that "we remain engaged on this issue and will continue to support the Group of Experts' work to develop clear and practical due diligence guidelines in close cooperation with the OECD, industry and other interested parties."

³ Global Witness written submission to the JCHR highlighting threats to human rights by UK companies operating in conflict or high risk areas of 5 May 2009, at http://www.globalwitness.org/media_library.php. Global Witness was subsequently invited to give evidence on 7 July 2009 in front of the Committee on our submission and on information stemming from our investigations.

⁴ 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.

⁵ In paragraphs 3 and 4 g) of Resolution 1857 the Security Council imposed financial and travel measures on "individuals or entities supporting the illegal armed groups in the eastern part of the Democratic Republic of the Congo through illicit trade of natural resources."

⁶ See: paragraphs 78 and 88 of the 2008 UN report; also see page 3 of the 2009 UN report and other supporting paragraphs.

⁷ Robert McCorquodale, "Corporate Social Responsibility and International Human Rights Law", *Journal of Business Ethics*, DOI 10.1007/s10551-009-0296-5 (Springer 2009).

Nevertheless, passive support for a UN initiative does not preclude nor substitute the urgent need to take action at the national level by the UK Government. Furthermore, the UK Government does not affirm that the UN recommendations, when they are made, will be integrated into UK law or policy.

The ongoing failure of the UK Government to take action to prevent human rights harm committed by UK companies operating in conflict areas is underscored by the need for Global Witness to bring a complaint against Afrimex in 2007, five years after the company was first cited by the UN Panel of Experts as engaged in the illegal exploitation of natural resources. Afrimex was subsequently named in the 2008 Report of the UN Group of Experts as sourcing minerals from Muyeye, a *comptoir* reported to be funding the FDLR.

Furthermore, the response issued by the UK Government reveals an implicit contradiction in its position. On the one hand, the UK Government has failed to act on findings made by the UN Group of Experts (as referenced above and with respect to UN Resolutions for the DRC), while, on the other hand, it claims to be waiting for instruction from the same UN group when it comes to receiving guidance on the implementation of due diligence practices by companies.

UK Government statement on UK NCP process is unhelpful with no clear instruction for moving forward

The UK Government's response on pages 11 and 12 is vague and it fails to address the core concerns relating to the lack of teeth that final statements of the UK NCP currently have. Momentarily, the UK NCP is the only process that can be used to get a public statement condemning the behaviour of companies that act in violation of international human rights standards. For reasons expressed in our submission to the JCHR, it is crucial and urgent to formalise NCP final statements into UK policy and regulation.

Export credit guarantees should only be given to companies that exercise due diligence

On page 36 the Government states that it does not agree with Global Witness "...that there had been no indication that the Export Credits Guarantee Department (ECGD) has become more effective at monitoring or implementing its existing standards, particularly on its anti-bribery measures." However, no evidence has been provided showing that the actions of the ECGD have improved.

Furthermore, for reasons stated in our submission, we disagree with the position of the UK Government that "...exporters should not be compelled to perform due diligence on human rights impacts in support of the applications they make to ECGD." We also refer to The Corner House's submission to the JCHR dated May 2009.⁸

The UK Government continues to shrug off its duty to ensure strong human right standards when it is providing financial support and other services to UK companies operating in conflict affected areas. The UK Government should use the ECGD to ensure that companies exercise due diligence, and should act proactively and withdraw its support altogether when companies are found to be committing or complicit in human rights abuses.

⁸ Joint Committee on Human Rights Inquiry into Business and Human Rights - Memorandum from The Corner House

Calling on the UK Government to take immediate action

Global Witness restates its recommendations to the JCHR and calls on the UK Government to act immediately to implement concrete reforms by:

1. Amending existing legislation or passing new legislation that criminalises UK companies for their involvement in abuse committed abroad using, for example, the foreign provisions of anti-corruption legislation as a precedent.
2. Issuing warnings and providing pre-emptive advice and assistance to UK companies operating in conflict areas with respect to human rights concerns prevalent in those areas.
3. Monitoring the activities of UK companies operating in conflict areas and requiring that they report on the implementation of their due diligence obligations.
4. Sanctioning UK companies found to be involved in violent crime through mechanisms and techniques reflecting the severity of the violations by public and private companies.
5. Compelling UK companies to carry out due diligence to ensure that trade in natural resources from conflict areas is legal and complies with international human rights instruments.
6. Requiring UK companies to show that any materials purchased from conflict areas neither finance armed groups or military units, nor contribute to human rights abuses at any point along the supply chain.
7. Monitoring, investigating and providing updated reports to the UN Security Council on UK companies identified in UN reports (e.g. UN Group of Experts and UN Panel of Experts reports) which have been independently verified as making payments to armed groups either directly or through their supply chain.

We welcome the opportunity to consult further with respect to these matters.

Yours truly,



Gavin Hayman

Director of Campaigns
Global Witness