

RIGHTS AND ACCOUNTABILITY IN DEVELOPMENT

28 June 2004

The Rt Hon Patricia Hewitt MP,
Minister of Trade and Industry
Department of Trade and Industry
1 Victoria St
London SW1H 0ET

Dear Secretary of State,

We wish to express our concern about the alleged complicity of UK registered companies in the illegal exploitation of natural resources, which helped fuel the long running and devastating conflict in the Democratic Republic of Congo. We believe that a prosperous and peaceful future cannot be based on a culture of corporate misconduct and impunity. It is imperative that exploitation gives way to conduct that promotes transparency, respect for human rights and sustainable development. This can only be achieved if the UK and other OECD governments show the determination to make a public distinction between those companies that behaved in compliance with agreed standards of corporate conduct and those that failed to adhere to the OECD Guidelines for Multinational Enterprises. The Panel's reports have left many companies in an intolerable situation. Many are anxious to clear their names. We believe it is in everyone's interests for these issues to be resolved with due process. As we have explained, RAID does not claim that any of these companies are guilty of misconduct, merely that the UN Panel reports raise legal and ethical questions which require clear resolution in the interests of both responsible business and the Congolese people.

By means of this letter we are formally requesting the UK NCP, under the implementation procedures of the OECD Guidelines, to initiate specific instances against the following companies listed in the UN Panel of Experts report: Oryx Natural Resources Ltd, Avient, DAS Air, Tremalt / Kababankola (part of the Breco business group owned by John Bredenkamp), Alex Stewart (Assayers) Ltd. and Ridgepoint Overseas Developments Ltd.

Oryx Natural Resources Ltd: It has been alleged that there was a secret profit sharing agreement whereby Oryx and the Government of Zimbabwe were each to take 40 per cent of the net cash inflow from Sengamines (one of MIBA's richest diamond concessions). In effect Oryx was being used as a front for Zimbabwean Defence Forces and its military company OSLEG. The Panel had evidence (which we presume has now been shared with the UK NCP) that there were proposals made for a joint Zimbabwe-DRC company to be set up in Mauritius to disguise the continuing economic interests of ZDF in the DRC. There is also evidence that Sengamines served as a front for illegal foreign exchange transactions using several routes into and out of the DRC. These activities would appear to be in contravention of the following provisions of the Guidelines concerning anti-competitive practice (Chapter IX.1), disclosure (Chapter III.3, III.4), anti-bribery (Chapter VI.1, VI.5, and VI.6), human rights (Chapter II, 2) and political involvement (Chapter II.11).

Avient Air: The area of most concern under the *Guidelines* relates to the Panel's allegations that Avient contracted to organise bombing raids and brokered the sale of military hardware: at issue is whether these activities, as alleged by the Panel, can be reconciled with the provision to respect human rights (Chapter II, 2). The consequences of these raids are unknown, but the public has an interest in knowing the extent of any involvement by a private company.

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DAS Air: Dairo Air Services was, according to the UN Panel, involved in the transportation of coltan from the eastern DRC to the benefit of the Ugandan backed RCD-ML rebel force. DAS Air's activities appear to be incompatible with the provisions under the Guidelines requiring respect for human rights and contributions to economic progress and sustainable development (Chapter II, 2 and 10).

Tremalt Ltd/ Kababankola Mining Company (part of the Breco Business group): The Panel alleges that the price paid for the mining concessions in Katanga was too low. It maintained that there was a confidential profit sharing agreement between Tremalt and the governments of DRC and Zimbabwe. If true, such confidential agreements would contravene Chapter VI, 5 of the Guidelines, which recommends auditing practices that prevent the establishment of 'off the books' accounts or the creating of documents that do not fairly record transactions. Such agreements would also be difficult to reconcile with provisions in Chapter III.3 and III.4 on disclosure. The involvement of high-ranking officers from the Zimbabwean Defence Forces (ZDF) suggests that there may also have been improper political involvement (Chapter II, 11).

Tremalt and other Breco Business group companies, Raceview Enterprises and Aviation Consultancy Service Company (ACS) were allegedly involved in procuring equipment for the ZDF and the Congolese Armed Forces, which enabled them to prosecute the war. It is alleged that Bredenkamp's representatives supplied spare parts for ZDF Hawk jets, which even if it were not formally in breach of the European Union sanctions on Zimbabwe, would appear to be incompatible with the human rights provision of the Guidelines (Chapter II, 2).

Alex Stewart (Assayers) Ltd: the company was accused of acting as an assayer for Eagle Wings, a company that according to the Panel was trading in coltan from Rwanda-controlled eastern DRC. If the ores assayed by Alex Stewart were supplied by a company characterized by the Panel as a 'Rwandan-controlled *comptoir*' in eastern DRC, then Alex Stewart may have played a part in facilitating a trade ultimately based on conflict and forced labour. If these concerns are borne out, then there is a basis for examining whether a breach of provision Chapter II.10 on ensuring compliance down the supply chain and provisions Chapters II.1, II.2 and IV.1c on, respectively, sustainable development, respect for human rights and the abolition of forced labour have occurred.

In addition, we would also like to request your good offices in facilitating separate meetings with Hambros Bank and Barclays to discuss issues arising from the Panel's reports. The questions RAID would wish to raise concern how they applied best practice in their due diligence with respect to clients operating in the DRC.

We respectfully draw your attention to the material contained in RAID's report *Unanswered questions: companies, conflict and the Democratic Republic of Congo* about these companies that was submitted to DTI and the National Contact Point in April 2004. We believe that the information contained in the report should provide a sufficient basis to initiate the procedures. We would be happy to provide additional material where necessary on the companies in question. We believe that it is in the best interests of the implementation of the procedures for there to be a complainant in such cases.

So far RAID has been disappointed about the apparent lack of willingness on the part of British authorities to investigate the Panel's allegations. This is in contrast to the actions taken in Belgium where criminal investigations based on the Panel's information is turning up evidence that money from the state-owned diamond company, MIBA, was laundered through Belgolaise bank accounts, some of which was then used to purchase weapons. The South African courts have also started to uncover assets held in the names of senior Congolese political figures as a result of breach of contract lawsuits brought by businessmen against the DRC Government. One of the businessmen, Frans Rootman, was, according to a report in the South African newspaper, *Beeld*, of 22 June hired by Laurent Kabila to trace cobalt allegedly illegally exported from the Congo by the Zimbabwean citizen, Billy Rautenbach.

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Ridgepoint Overseas Developments Ltd: Mr Rautenbach's company, Ridgepoint Overseas Developments Ltd (which was mentioned in the UN Panel Reports of November 2001 and October 2002) is registered in the British Virgin Islands and therefore falls under the competence of the UK NCP. According to the UN Panel "some of Gécamines' best cobalt producing areas were transferred to a joint venture between Mr Rautenbah's Ridgepoint Overseas Developments Ltd. and the Central Mining Group, a Congolese company, controlled by Pierre-Victor Mpoyo, then Minister of State". Mr Rautenbach was appointed Chairman of Gécamines (the state owned mining company) in November 1998 but was removed from his post in March 1999 following an audit by Ernst & Young. At the time Mr Rautenbach was both Managing Director of Gécamines and of the joint venture, "a blatant conflict of interest". The Panel alleges that Mr Rautenbach was appointed by President Kabila to head Gécamines because of his close ties to the ruling ZANU-PF party in Zimbabwe (UN Panel Report November 2001, S/2001/1072 paragraph 31). In 2000 the DRC Government withdrew Mr Rautenbach's mining concessions reportedly after Mr Rautenbach had failed to pay the Government's share of the profits from the joint venture. President Kabila allegedly accused him of transferring profits to a shell company, as well as stockpiling cobalt in South Africa (UN Panel Report November 2001, S/2001/1072 paragraph 32). Mr Rautenbach has resumed his cobalt mining activities in Katanga. If these allegations are true then Ridgepoint would have infringed numerous provisions of the OECD Guidelines *inter alia* Chapter III, 3 and III, 4 on disclosure, Chapter II, 11 on improper political involvement and Chapter VI.

In view of the gravity and complexity of the cases, it is hoped that DTI will act on RAID's recommendations and set up an inter departmental group with appropriate areas of expertise to handle the DRC related cases as expeditiously as possible. The inter departmental group could refer cases as appropriate, where sufficient evidence exists, to the Crown Prosecution Service, Customs and Excise, the Financial Intelligence Unit, the Serious Fraud Office and the International Criminal Court. Other cases may only be able to be dealt with under the specific instance procedure, which may lead, after proper consideration of the evidence, to statements finding some of the actions of these companies to have breached the Guidelines. We look forward to the UK Government providing much needed leadership on this issue as it has on many other areas affecting developing countries. The OECD Guidelines should form part of an effective government led programme of action to forestall or deal with corporate misconduct in non-adhering countries with weak governance.

We look forward to working constructively with DTI on this matter

Yours sincerely,

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