

RAIC

Rights & Accountability in Development

July 8, 2005

Paul Wolfowitz, President
World Bank Group
1818 H Street NW
Washington, DC 20433

Dear President Wolfowitz:

We are writing concerning Anvil Mining and the company's Dikulushi copper/silver mine in the Democratic Republic of the Congo (DRC). In September 2004, despite the numerous concerns of Congolese and international NGOs – one of which included the propriety of Anvil's relationship with a prominent Congolese political official – the Board approved a \$5 million political risk guarantee from the Multilateral Investment Guarantee Agency (MIGA) for the Stage II expansion of the Dikulushi mine.

On June 6, the Australian Broadcast Corporation's "Four Corners" program aired a documentary that revealed Anvil's logistical role in a brutal massacre that took place in the town of Kilwa in October 2004. In addition, Anvil Chief Executive Bill Turner confirms on camera that the company has indeed made payments to Mr. Augustin Katumba Mwanke, despite assurances given to MIGA stating otherwise. In light of these revelations, we believe that MIGA has no option but to withdraw its political risk guarantee for the Dikulushi project.

As you may know, in 2000 the United Nations Security Council appointed a Panel of Experts to investigate illegal exploitation of mineral resources in the DRC and the widespread concern that this was fuelling the war. The 2002 report produced by the Panel exposed a vicious cycle of resource-driven conflict in the DRC. The Panel concluded that sophisticated networks of high-level political, military and business people were deliberately fostering violence in order to retain control over the DRC's natural resources.

Starting in June 2004, NGOs raised a number of concerns with MIGA staff concerning Dikulushi and later with the Board of Executive Directors. Given the DRC's history of extractive industries-related conflict, we were particularly troubled that MIGA had not taken extraordinary measures to assess the human rights and security implications of the project and to probe the company's relationship with senior Congolese politicians.

MIGA's failure to comprehensively examine and respond to these concerns exemplifies the agency's failure to heed the important lessons learned from the *Extractive Industries Review* (EIR), particularly critical lessons relating to conflict and natural resources. (See Appendix A for the full correspondence between NGOs and MIGA and MIGA's Executive Directors.)

Kilwa massacre

In October 2004, a few weeks after the Board approved Anvil's guarantee, a small-scale uprising occurred in the town of Kilwa, approximately 50 kilometers south of the Dikulushi project. Kilwa is crucial to Anvil's copper and silver mining operation, as it is a port on Lake Mweru from which the ore is shipped to Zambia for processing.

The Lubumbashi regional office of MONUC, the organization established by the United Nations Security Council to monitor and maintain the cease-fire in DRC, conducted an investigation soon after these events occurred. As many as 100 deaths were reported, and according to the UN, as many as 28 deaths appeared to be summary executions. Bodies were dumped in shallow graves for which MONUC calculated geographical coordinates. According to eyewitness accounts gathered by human rights lawyers, the soldiers went on an indiscriminate rampage carrying out arbitrary arrests and summary killings of suspected rebels and their supporters, raping women, and subjecting those in detention to torture and beatings.

MONUC's report also revealed that Anvil Mining provided logistical support for the military operation. Anvil helped fly in the military in the planes that it leases to ferry people to and from the mine, and provided vehicles for the military once they reached Kilwa. People who had been arbitrarily detained were also flown to Lubumbashi in Anvil's planes. Witnesses also informed human rights lawyers that Anvil provided the military with food and money, and Anvil vehicles, driven by Anvil employees, were used to bury the corpses of the massacre.

Anvil's relationship with Mr. Katumba Mwanke

The Four Corners documentary, which contains interviews with Anvil Chief Executive Bill Turner, calls into question the reliability of representations made by Anvil to MIGA concerning the company's relationship with a prominent Congolese political figure, Mr. Augustin Katumba Mwanke.

Mr. Katumba Mwanke was identified by the UN Panel of Experts as being part of an "elite network" involved in the illegal exploitation of the DRC's mineral wealth. President Joseph Kabila called for an investigation into the Panel's allegations, but formal charges were never brought against Mr. Katumba Mwanke (and other Congolese figures named by the Panel), purportedly because the prosecutor was unable to secure asylum in Europe. President Kabila appointed Mr. Katumba Mwanke to be the *Secrétaire Général du Gouvernement* between Kinsasha and *Mouvement de liberation du Congo* as part of the Sun City Accord. Mr. Katumba Mwanke's name also appears on the Accord Inclusif (2003), and it is rumored that Mr. Katumba Mwanke was to be named the DRC ambassador to the United Nations.¹ In addition, legal proceedings in South Africa revealed that Mr. Katumba Mwanke holds substantial assets in South Africa. He is listed as the sole director of a shell company called Kikukat Investments and is registered as the owner of two residential properties.²

¹ Mr. Mwanke also held the appointments of Finance Counselor and Governor of the Katanga Province in Laurent Kabila's Government.

² *The Johannesburg Sunday Times*, Bonny Schoonakker "Looters' Find Safe Haven in SA," June 20 2004.

In the Four Corners documentary, Mr. Turner denied that Anvil benefited from any political assistance in obtaining the Dikulushi concession. Later, Mr. Turner and Mr. Katumba Mwanke both emphatically denied having any type of business relationship. However, Mr. Katumba Mwanke was, from November 2001 until at least June 2004, a director of Anvil Mining Congo SARL (Limited Liability Company), Anvil's Congolese subsidiary.³ When the interviewer confronted Mr. Turner with this evidence, he claimed that Mr. Katumba Mwanke "was the government representative on the board" and that he was paid "about \$1,500 or \$1,000" for attending "probably three directors' meetings." Mr. Turner also acknowledged that Anvil rented a house from Mr. Katumba Mwanke for approximately \$50,000 a year, a figure considerably above the market price. (See Appendix B, transcript of the Four Corners program, "The Kilwa Incident.")

MIGA's due diligence failures

MIGA failed to adequately investigate the circumstances surrounding the involvement of Mr. Katumba Mwanke in Anvil's acquisition of the Dikulushi mining concession during the war. In a June 2004 meeting, NGOs asked MIGA staff specifically to investigate whether Anvil had made any improper payments directly or indirectly to Mr. Katumba Mwanke. MIGA staff later stated via email that Anvil had given them assurances that no improper payments were made to intermediaries for help in obtaining the concession, and that the contract requires the guarantee holder to make representations and warranties to this effect.⁴ In light of the admissions made by Mr. Turner in the Four Corners broadcast, it appears that Anvil may have purposely withheld information from MIGA regarding the company's relationships with Mr. Katumba Mwanke.

It is worth noting that the Board approved the Dikulushi project on September 23, 2004, a few months after the publication of the final report of the *Extractive Industries Review* (EIR) and the week following the release of the WBG's response, "Striking a Better Balance." In the Bank's response to the EIR, management stated that it would require sponsors to follow provisions regarding the use of private and public security forces based on the *Voluntary Principles on the Use of Security Forces*.⁵ The Voluntary Principles ask companies to.

- maintain the safety and security of their operations within a framework that ensures respect for human rights;
- assess the conduct of armed groups or other forces operating in the area based on available human rights records;
- monitor the use of their equipment to ensure it is not used in an inappropriate manner;
- record and report any credible allegations of human rights abuses by local public security forces or other armed groups responsible for security in the area; and
- urge for investigations where appropriate.

³ These documents are in the possession of RAID's lawyer and could be provided to Bank Management.

⁴ Correspondence from Moina Varkie, World Bank, Aug 27, 2004.

⁵ World Bank Group, "Striking a Better Balance: The Extractive Industries Review," Executive Summary, November 26, 2004, p.36

At the time of the project's approval, however, MIGA staff asserted that Dikulushi was not a prime target for rebels, but noted that in the event of a security threat a "requirement to pay a tribute in exchange of continued operations is more likely than destruction of assets that prevent continued operation."⁶ When NGOs asked about the security arrangements at the mine, MIGA staff informed us that there were no armed guards. However, it is our understanding that the Dikulushi mine is guarded by the Congolese Armed Forces at all times. Yet there is no evidence to suggest that MIGA took appropriate steps to ensure that Anvil Mining was complying with the *Voluntary Principles on the Use of Security Forces* as well as other international standards such as the *OECD Guidelines for Multinational Enterprises* and the *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*.

Conclusion

The Canadian Government is examining the allegations against Anvil to determine whether a full investigation is warranted. In addition, a formal request has been made to the Australian Federal Police to investigate whether there is evidence of the commission of crimes against humanity or war crimes under the *Australian Criminal Code Act 1995*, breaches to the *Criminal Code Amendment Act 1999* (Australia's law prohibiting bribery of foreign officials in accordance with the OECD Convention on Bribery) and/or the *Proceeds of Crime Act 2002* or *1987*.

We hope that under your leadership, the WBG will make good its pledge to protect the rights of people affected by extractive industry projects and promote transparency and good governance in resource rich developing countries. The Dikulushi project – the first mining project in the DRC to have the World Bank's backing – was supposed to send a positive signal to the mining investment community and demonstrate the WBG's readiness to support post-conflict recovery in the DRC. Instead, Dikulushi has become a symbol of the Bank's failure to learn from the EIR and to promote pro-poor investment in Africa.

We therefore respectfully request that you instruct:

- the World Bank's Department of Institutional Integrity to assess whether MIGA staff were aware of the payments Anvil made to Mr. Katumba Mwanke and if so, were these reported to MIGA management and the Board;
- the Compliance Advisor Ombudsman to investigate Anvil's logistical role in the Kilwa massacre and whether Mr. Turner's admissions in the "Four Corners" documentary represents a breach of contract and thus warrants a termination of the guarantee; and
- MIGA's Executive Vice President, Yukiko Omura, to oversee a review of the agency's policies and procedures for assessing potential human rights impacts of projects to ensure these are consistent with commitments made by the Bank as part of the EIR.

⁶ "Report from the President of MIGA to the Directors on the Proposed Guarantees to Anvil Mining NL (Australia) and RMB Resources (Ireland) for Investments in Anvil Mining Congo SARL (DRC)," Sep 8, 2004, Pg. 12.

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Yours sincerely,



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