

## **CONCERNS AND QUESTIONS REGARDING THE DIKULUSHI PROJECT IN THE DEMOCRATIC REPUBLIC OF CONGO**

### **Acquisition of the Mine Concession**

Anvil Mining obtained the Dikulushi mining concession during the war, which raises questions about whether the manner in which the company acquired the concession complies with agreed international standards of corporate conduct. We are not alleging that Anvil has acted improperly, but we believe that it is incumbent on MIGA to conduct additional due diligence given that the DRC is only just emerging from a prolonged natural-resource driven conflict. Given the traditional reluctance of the Congolese government to liberalise mining, it seems unusual that a greenfield concession was granted to a foreign company during the war. It is also striking that the agreement with Anvil bypassed the usual negotiations with Gécamines, the DRC's state-owned mining company, which was responsible for dealing with most copper and cobalt mining contracts.

It is not evident that MIGA and Anvil have fully considered the Panel's investigation of illegal exploitation of natural resources and conflict in the DRC. Although Anvil was not itself mentioned in the UN Panel Report, First Quantum (which owns over 17 percent of Anvil) admitted in its public response to the UNSC that its agents had offered corrupt payments in order to obtain a concession.

Finally, Mr. Katumba Mwanke, the former governor of Katanga Province and former Prime Minister, who is from Pweto (near Lake Mweru where the mine is located) and is a high ranking Mubemba, was apparently involved in the decision to grant the mining concession at Dikulushi to Anvil. His association with Anvil would undoubtedly help ensure that the company would be accepted by the local community. But Anvil's close association with Mr Katumba Mwanke is a serious risk factor for this project. Mr Katumba Mwanke has been revealed in legal proceedings to be the holder of 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 (see *The Johannesburg Sunday Times*, Bonny Schoonakker "Looters' Find Safe Haven in SA", June 20 2004). The Belgian newspaper, *De Morgen* ( Georges Timmerman, 8 August 2004) also reported that a South African court just authorized the seizure of money held by Mr Katumba Mwanke in South African banks.

- The transitional government has set up a parliamentary commission to review all commercial agreements and contracts signed during the conflict. Has Anvil's mining convention been reviewed by the Commission? Was the mining concession obtained in a way that conforms to internationally agreed standards of competitive bidding and in compliance with other provisions of the OECD Guidelines? Has Anvil given MIGA proper assurances that no improper payment(s), including "a success fee" was paid to intermediaries for help in obtaining the concession?
- What assurances can MIGA provide that Anvil does not have any improper relationships with senior Congolese political figures such as Mr Katumba Mwanke? Given that Anvil has stated that it has paid taxes through an agent, has MIGA carried out any check over the past two years, while the project has been under consideration, to ensure that the company has not made any improper payment directly or indirectly to Mr Katumba Mwanke?

### **Development Benefits for the DRC**

The Dikulushi mine has been in commercial production since 2002 and is seeking a MIGA guarantee for its Stage II expansion, consisting largely of facility upgrades. According to *Shares Magazine* in July 2003, "Dikulushi was developed without the benefit of a bankable feasibility study. Nor was the resource

base drilled to a reserve standard. These unusual steps were taken because the deposit was so rich and no one knew how long the Democratic Republic of Congo's favorable political climate would last. Speed was therefore of the essence.” The expected life of the operation is eight years.

Under the old Congolese Mining Code, which governs the Dikulushi project, it was illegal to export unprocessed ore without explicit authorisation from the DRC Government. As stated previously, ore from Dikulushi is exported out of the country through Zambia for processing in South Africa and Namibia. Not only is it unclear how and if Anvil received an exemption from this provision, but the export of unprocessed ore raises questions about the level of development benefits that will accrue to the DRC from the Dikulushi project.

- What value will MIGA add to the project given the late stage of the Dikulushi project's development?
- What direct, pro-poor development benefits will the DRC and local communities derive from the project?
- If it is indeed true that Anvil obtained special exemptions from the prevailing mining code provisions, can the company document this exemption? Does this not risk being seen to contravene the OECD Guidelines' provision calling on companies to “refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework”?
- Can Anvil supply an audited breakdown of the amount of tax and export duties the company pays to the DRC state? Is Anvil continuing to pay taxes through an agent? What is MIGA's position on guaranteeing projects in which project sponsors pay taxes through intermediaries?

### **Labour and Employment**

Civil society organisations in Katanga have expressed concern that the local workers do not have contracts (they are only “day” workers), that they reportedly have not been allowed to unionise, and that they do not have adequate accommodations.

- Has MIGA investigated MIGA has investigated the concerns of the local workforce as part of its due diligence?
- Has MIGA made, as a condition of its support, the implementation of core labour standards by Anvil at the Dikulushi project site?

### **Security**

The UNSC Resolution 1493 (2003) imposed an arms embargo in which all States, including the DRC, are required to take the necessary measures to prevent the direct or indirect supply, sale or transfer of arms and any related material to all foreign and Congolese armed groups and militias operating in the Kivus and Ituri, as well as to groups not party to the global and all-inclusive agreement. UNSC Resolution 1533 (2004) of 12 March 2004 authorised a Group of Experts to closely monitor compliance with the arms embargo in conjunction with MONUC (the UN peacekeeping force in the DRC). Although the recently completed report from the group of experts largely concentrates on the eastern region, it also expresses concern about suspect military flights and large quantities of arms and ammunition transiting through the Lubumbashi airport. It is suspected that these arms are being sent to groups in the Kivus and Ituri. The Group of Experts report also expresses concern about the porosity of the DRC's borders that facilitate the trafficking of arms and other illicit commodities.

Anvil has confirmed to World Vision, a non-governmental organization, that they were visited by Mayi Mayi (armed militias who have been accused of human rights violations in Northern Katanga) sometime around February or March 2004. Anvil has explained that they were able to defuse the situation without resorting to force.

- What steps have been taken by Anvil to ensure that its facilities at Lake Mweru are not being exploited by arms traffickers?
- Does Anvil employ private security guards? On the assumption that Anvil has private security arrangements at Dikulushi, what steps has Anvil taken to ensure that its channel for re-supplying security personnel cannot be used for illegal arms supply?
- How has MIGA established how the interaction between Anvil and the Mayi Mayi was brought to a peaceful solution? Does it mean that Anvil was obliged to make payments to the Mayi Mayi?
- International Alert, which works on conflict prevention, in its report *Transnational Corporations in Conflict Prone Zones* (September 2003) described MIGA's risk assessment methodology for understanding conflict impacts as 'undeveloped'. Has MIGA established whether Anvil's conduct is in line with international standards such as the US State Department backed Voluntary Principles on Security and Human Rights?

### **Governance**

The history of extractive industries-related conflict in the DRC, as evaluated by the UNSC, is not considered adequately in the Dikulushi environmental impact assessment – the only publicly available project document. Furthermore, the “Political Analysis” by Anvil does not consider the history of resource exploitation in the DRC and repeatedly refers to past and present conflicts as “ethnic conflicts” or “tribal animosities”. There is also no assessment of governance in the DRC or an explanation of how MIGA has evaluated governance conditions as part of its due diligence, as called for in the World Bank's response to the Extractive Industries Review.

- What governance criteria has MIGA used to assure itself that revenues and fees from the Dikulushi project are deposited into the public treasury and transparently managed to benefit the people of the DRC?
- Has satisfactory public disclosure of project documents/information and consultation with local communities taken place, and should other documents be disclosed in the spirit of greater transparency?
- Have MIGA and Anvil fully assessed the role of natural resources in the DRC's conflict and what will MIGA and Anvil do to ensure that this project will not contribute to further conflict?
- Is Anvil operating in full compliance with the OECD Guidelines?

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