

RAID

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.

Please address correspondence to Patricia Feeney and Colleen Freeman of Rights & Accountability in Development at tricia.feeney@raid-uk.org and colleen.freeman@raid-uk.org .

Yours sincerely,



Patricia Feeney
Rights & Accountability in Development



Colleen Freeman
Rights & Accountability in Development

On behalf of:

Hubert Tshiswaka
Action contre l'impunité pour les droits humains (ACIDH) (DRC)

Shannon Lawrence
Environmental Defense (US)

Michelle Medeiros
Friends of the Earth-United States

John Mihevc
Halifax Initiative Coalition, Canada

Patrick Earle
Human Rights Council of Australia

Jamie Kneen
MiningWatch Canada

Cc: MIGA Executive Directors
Yukiko Omura, Executive Vice President, MIGA
Maarten de Jong, Director, Department of Institutional Integrity
Meg Taylor, Director, Compliance Advisor Ombudsman
Gobind Nakani, Vice President for Africa
Pedro Alba, Country Director, Democratic Republic of Congo
The Honorable Richard Lugar, U.S. Senate

Appendix A

Contents:

- Letter from Congolese NGOs to MIGA, June 21, 2004
- Letter to Executive Directors, August 25, 2004
- Concerns and Questions Regarding the Dikulushi Project in the DRC

Lubumbashi, le 21 juin 2004.

A la Direction de MIGA
Washington, DC

Concerne Position des Organisations de la Société Civile du Katanga sur la garantie financière à accorder à Anvil Mining Congo pour le développement du projet Dikulushi

Chers Messieurs et Mesdames,

Le Secrétaire Général de la N.D.S. (Nouvelle Dynamique Syndicale) a participé le lundi 07 juin 2004, à la rencontre avec MIGA concernant Dikulushi (Anvil Mining Congo).

Après lecture du rapport final de cette rencontre et restitution de tous les temps forts de cette rencontre, nous, Organisations de la Société Civile du Katanga, évoluant dans le secteur des Ressources Naturelles et des industries extractives, prenons ce jour la position sur cette question.

Nous ne sommes pas opposés à ce que Anvil Mining Congo puisse bénéficier d'une garantie financière de MIGA pour le développement du projet Dikulushi. Le Katanga a aujourd'hui besoin d'investisseurs sérieux capables de redonner à l'industrie minière sa fierté d'autrefois. Cette industrie extractive du Katanga a soutenu la vie de toute la nation congolaise pendant de nombreuses années.

L'avènement au Katanga de gros investisseurs suscite à la fois des craintes et des espoirs

Les Organisations de la Société Civile du Katanga pensent que l'arrivée de gros investisseurs permettra de résorber le chômage, de développer les milieux ruraux longtemps abandonnés à leurs triste sort, de remplir les caisses du Trésor Public.

Comme les autres investisseurs miniers qui évoluent au Katanga depuis 1997, (avènement de l'AFDL et début des conflits meurtriers) Anvil Mining Congo a réussi à vivre harmonieusement dans un environnement généralisé de corruption exponentielle. Il faut en effet avoir du courage et prendre de gros risques pour s'engager résolument en République Démocratique du Congo.

Des entreprises telles que Forrest, Ridgepointe, Tremait, Shemaf, Somika, et un grand nombre d'aventuriers pakistanais, indiens, chinois, coréens achètent des minerais bruts et construisent des fours pour traiter les alliages dans un désordre indescriptible. Aucun pays au monde ne peut accepter une telle forme d'exploitation.

Les enfants (8 à 10 ans), les adolescents sont faits esclaves dans leur propre pays. Ils travaillent matin et soir à des conditions inacceptables pour bénéficier d'une maigre ration alimentaire comme salaire.

Le désordre dans l'industrie minière au Katanga est tel que même les anciennes mines d'uranium de Shinkolobwe sont exploitées sans aucun contrôle.

C'est dans cet environnement de pillage et de désordre généralisé que Anvil Mining Congo a pris le risque de développer Dikulushi (situé à 55 Km de la frontière zambienne).

Ainsi, l'avènement au Katanga de gros investisseurs suscite à la fois espoirs et craintes.

Les Organisations de la Société Civile du Katanga pensent que l'arrivée de gros investisseurs permettra de

- résorber le chômage
- remplir les caisses du Trésor public
- développer les milieux ruraux longtemps abandonnés à leur triste sort.

Nos craintes s'expriment lorsque nous constatons que les premiers actes de gestion de ces nouveaux investisseurs creusent davantage le fossé du pillage par des pratiques peu orthodoxes telles que la corruption, la fraude fiscale, la pollution ; le non respect des droits des communautés locales, le non respect des droits de l'homme et du travail etc...

Dikulushi n'échappe pas à cette règle. C'est pour cette raison que nous ne sommes pas rassurés que Anvil Mining Congo pourra faire la différence avec les autres exploitants miniers. Vous êtes sans ignorer que le Congo est actuellement un pays qui est géré en dehors des normes.

Nous relevons ici quelques cas flagrants de comportements peu orthodoxes :

- Anvil Mining Congo ne verse pas ses taxes au Trésor public lors de la traversée de la frontière de Kilwa. Elle les remet à certains agent fonctionnaires influents et obtiennent des papiers. En R.D Congo, la détention d'un papier officiel ne donne pas l'évidence de paiement d'une taxe. Seuls le bordereau de versement à la banque et la note de perception de la Direction Générale des Recettes Domaniales et Administratives (DGRAD) qui constitue la preuve de paiement au Trésor Public. A nos yeux, il s'agit d'un trafic d'influence, d'un achat des consciences.
- Anvil Mining Congo prive ses agents congolais du droit d'association à des syndicats. Il interdit que les syndicats reconnus puissent défendre les intérêts des travailleurs. Elle a organisé des groupes informels des travailleurs qui leurs sont totalement soumis.
- Anvil Mining Congo ne fait pas participer les communautés locales à l'élaboration du Plan de Développement Durable. Elle compte confier cette tâche à World Vision Australie alors qu'il existe au Katanga des Organisations locales ayant des compétences dans ce domaine.
- A date, anvil Mining Congo prétend avoir construit une route de 55 Km. Il s'agit en fait d'une route privée, construite pour les besoins de sa propre exploitation. Cette route ne

peut pas être considérée comme une route d'intérêt communautaire. C'est un impératif de son propre développement minier.

- Anvil Mining Congo exporte les produits bruts (sans aucune transformation). Le Congo ne bénéficie d'aucune valeur ajoutée. Prendre les richesses minières d'un pays, les traiter hors de ses frontières, bénéficier des exonérations sans aucune forme de compensation est une forme camouflée de pillage des ressources de la R.D.Congo.

De ce qui précède, Nous, Organisations du Katanga évoluant dans le secteur des Ressources Naturelles et des industries extractives, prenant en compte la conduite actuelle de Anvil Mining Congo, conduite qui s'inscrit dans des pratiques obscures et peu orthodoxes, demandons ainsi solennellement que les dispositions suivantes soient prises avant de voter la garantie de financement MIGA

1. Anvil Mining Congo devrait affecter à la direction de ses opérations au Congo, des dirigeants intègres ; qui ne sont pas des corrupteurs. Les dirigeants actuels de anvil Mining Congo, ayant évolué dans le contexte de la guerre, ont trop d'amitiés avec les responsables politiques congolais. Le soutien politique qu'ils ont acquis les permet de se conduire comme des colons sur un territoire conquis.
2. Anvil Mining Congo devrait signer une déclaration sur l'honneur qu'elle ne va plus payer ses taxes entre les mains des fonctionnaires. Mais qu'elle devrait désormais les verser dans le compte du Trésor Public.
3. Anvil Mining Congo devrait signer une autre déclaration sur l'honneur qu'elle va faire participer les communautés locales, la société civile du Katanga, à l'élaboration du Plan de Développement durable. Pour ce qui concerne la réalisation de ce plan, il est nécessaire de confier l'exécution à des Organisations locales telles que SADRI (Eglise protestante), BDD (Eglise catholique) qui sont très actifs et sont en programme avec la Banque Mondiale. Ceci permettra de développer des expertises locales et nationales. Actuellement, Anvil Mining Congo se propose de confier ce travail à World Vision Australie qui n'a aucune connaissance de l'écosystème social du Katanga.
4. Anvil Mining Congo devrait formellement permettre à son personnel de s'affilier à des Organisations syndicales. Le fait de refuser l'implantation des syndicats couvre beaucoup de violations des droits des travailleurs : licenciements abusifs, travail hors normes, salaires très dérisoires etc...

Anvil Mining Congo devrait signer une autre déclaration sur l'honneur de se laisser observer par les Organisations de la société civile évoluant dans le secteur des Ressources Naturelles et des industries extractives. Ces Associations gèrent actuellement un Observatoire des Entreprises extractives sur le respect des normes de Responsabilités Sociales des Entreprises (RSE).

Un rapport sera publié chaque semestre sur les pratiques de cette entreprise. Nous disons qu'une entreprise évoluant dans un contexte normal ne peut pas refuser de se faire observer de manière objective.

**LES ORGANISATIONS DE LA SOCIÉTÉ CIVILE DU KATANGA
ÉVOLUANT DANS LE SECTEUR DES RESSOURCES NATURELLES ET DES
INDUSTRIES EXTRACTIVES.**

GANVE: Jean Marie KABANGA

N.D.S.: Jean Pierre MUTEBA

EMAK: Jean Claude MUJINGA

C.J.P. Catholique: Gabriel LUBUTU

L'OR VERT: KAZAD Mwin KALAMB

SADRI: Pierre KAHENGA

ORMES: Corneille MITONGA

A.E.D: Stéphane BANZA

F.D.H.: Maître KONGOLO

ACPEM: Florent NAWEJI

R.R.N.: Germain KALENGA

ANECO: Joe SANDUKU

ECOLE ET DEVELOPPEMENT: Emile MUKAZ

JAC: Jean Luc KAYOKO

**Action Contre l'Impunité pour les Droits Humains, DRC •
Nouvelle Dynamique Syndicale, DRC • Rights and Accountability in Development, UK •
Friends of the Earth, US • Environmental Defense, US**

August 25, 2004

Executive Director
MIGA
World Bank Group
1818 H Street NW
Washington, DC 20433

Dear Executive Director,

We are writing to raise questions and concerns regarding MIGA's proposed guarantee for the Dikulushi copper-silver mine in the Democratic Republic of the Congo (DRC). In early June, we discussed these issues with MIGA staff. To date, we have not received a satisfactory response from MIGA or any indication that staff have considered these concerns as part of their due diligence for the project. *We urge the Board of Directors to ensure that MIGA has addressed these questions before it considers approval of the Dikulushi project guarantee.*

Anvil Mining's Dikulushi copper-silver project, located in the southeastern Katanga Province of the DRC, has been in commercial production since 2002. The open pit mine currently produces approximately 240,000 tons of ore per year and an expansion phase is underway. The ore is carried by barge from the DRC across Lake Mweru, transported by truck through Zambia, and processed in South Africa and Namibia. Minimal processing of the ore is carried out in the DRC.

The relationship between mineral exploitation and ongoing conflict in the DRC has been the subject of intense scrutiny in recent years. In 2000, the United Nations Security Council (UNSC) appointed a Panel of Experts to investigate illegal exploitation of natural resources in the DRC in response to widespread concern that the exploitation of gold, diamonds and other minerals was fuelling the war. In a series of reports, the Panel exposed a vicious cycle of resource-driven conflict that has taken hold of the country. The Panel's three-year investigation found that sophisticated networks of high-level political, military and business persons were intentionally fostering the violence in order to retain their control over the country's natural resources.

The Panel's October 2002 report accused dozens of western companies of violating the Organisation for Economic Co-operation and Development's (OECD) "Guidelines for Multinational Enterprises" (OECD Guidelines), which are governmentally-backed international standards for responsible corporate behaviour. The Panel felt it was necessary to bring to light the companies' role in perpetuating the conflict by neglecting to ensure that their raw materials were not originating from the DRC. By analysing the interconnections between companies, Congolese and foreign actors, the Panel maintained that business activities, directly or indirectly,

deliberately or through negligence, contributed to the perpetuation of the conflict and human rights abuses.

Over the past few months, we have raised questions with MIGA management regarding the Dikulushi project, but no substantive answers have been provided. Congolese civil society organizations from the Katanga region in the DRC expressed concerns about the Dikulushi project in a letter to MIGA (attached), but have received no reply. The questions and concerns relate to Dikulushi's proposed development benefits, employment conditions, acquisition of the mine concession, and security and governance concerns. We have attached a document outlining the issues in more detail and a copy of the letter sent to MIGA management from 14 Congolese organizations.

Given the World Bank's recent Extractive Industries Review debate, the critical issues relating to conflict and natural resource exploitation, and the fragile political and governance situation in the DRC, we feel it is essential to address these concerns before MIGA provides a political risk guarantee for the Dikulushi project.

We urge the Board to ensure that MIGA management has satisfactorily answered these questions through the course of its due diligence and to disclose any documentation to that effect. Thank you for your attention to these points concerning MIGA's involvement in the Dikulushi copper-silver project in the Democratic Republic of Congo.

Sincerely,

Hubert Tshiswaka
Action Contre l'Impunité pour les Droits Humains (ACIDH), DRC

Jean Pierre Muteba,
Nouvelle Dynamique Syndicale (NDS), DRC

Patricia Feeney
Rights and Accountability in Development, UK

Colleen Freeman
Friends of the Earth, U.S.

Shannon Lawrence
Environmental Defense, U.S.

Cc: Ms. Yukiko Omura, Executive Vice President, MIGA

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, 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 an 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?

Submitted by:

ACIDH, DRC
NDS, DRC
RAID, UK
Friends of the Earth, U.S.
Environmental Defense, U.S.

Appendix B

Transcript of the Four Corners Documentary, "The Kilwa Incident"

“The Kilwa Incident” - Four Corners
Monday, 6 June 2005

	<p>Two months ago, 4 Corners got wind of a disturbing story.</p> <p>It was a story set in a remote and little-known corner of the world.</p> <p>There’d been a massacre and a secret report... an Australian company was implicated.</p> <p>We wondered why this story hadn’t been told.</p> <p>So we set off on a journey that took us to a deeply troubled land... in a country which the world has preferred to forget.</p>
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ROWAN GILLIES, International President, Medecins Sans Frontieres

“It’s a hidden crisis and it’s an embarrassment I think to all of us that it is a hidden crisis because it’s not like we haven’t know it’s going on.”

	It’s a country with vast natural wealth - 10% of all the world’s copper, half of its cobalt, one-third of its diamonds.
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TRICIA FEENEY, Rights & Accountability in Development

“It’s a disaster zone, and so despite that fact that it is one of the most mineral rich countries in the world its people have had almost no benefit from that.”

	<p>Our journey would lead us into forbidding terrain... and it was here we found the story we’d come looking for... Bodies buried in mass graves... and eye-witness testimony of an Australian mining company’s complicity in arbitrary arrest, extreme maltreatment and summary executions.</p>
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<p>HUBERT TSHISWAKA Action Against Impunity for Human Rights</p>	<p><i>“In this water there is seven bodies, just somewhere here there is 12 bodies, and the single grave there... Q So 20 people buried in this spot? A Yeah, in this area, seven, 12 and that one.”</i></p>
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	Tonight on 4 Corners – a story of greed, ruthlessness and murder... a country pillaged and a company raking in the spoils.
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STORY TITLE: “The Kilwa Incident”	
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	<p>Our journey began on South African Airways flight 50 on the 5th of May.</p> <p>Fourteen hours out of Sydney, the endless plains and mighty rivers of equatorial Africa appeared sprawled out below us.</p> <p>Our destination was the country at the heart of the continent – the Democratic Republic of Congo.</p> <p>We landed in its capital, Kinshasa. Airline message: “We trust you have enjoyed your flight with us and we look forward to seeing you again. Thank you and goodbye”.</p> <p>We had done the research and thought we knew what to expect. One of the 10 poorest countries in the world... an average income of under a dollar a day. But none of the statistics prepared us for this.</p>
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	<p>Kinshasa is like a bombsite - a city laid waste - by four decades of decay under the dictator Mobutu, followed by eight years of war.</p> <p>It’s home to 8 million-people, an estimated 90 percent of them with no jobs and virtually no income.</p> <p>Many of them are refugees from a terrible war – a war that’s killed more people than any other conflict since world war two.</p>
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	<p>Although officially the war has ended, Kinshasa feels like a city under siege.</p> <p><i>The only security is provided by the 16-and-a half thousand United Nations troops, who make up the UN mission in the Congo, known as MONUC.</i></p> <p>With an annual budget of a billion US dollars, it’s the biggest UN project in the world - starting to rebuild this crippled country.</p>
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KEMAL SAIKI, MONUC Spokesman

“No roads, no infrastructures, a war that’s left 3.5 million people killed, 3.5 million people displaced from their homes, about 500,000 refugees in the nine countries bordering Congo, and ah the wounds of the war are still pretty much with us.”

	<p>The Congo’s natural treasures have been its curse since they were discovered by European explorers back in colonial times.</p> <p>The country was brutally colonised by the Belgian, King Leopold II, who made the Congo his personal possession and its people his slaves.</p> <p>Workers who failed to meet the king’s rubber quotas had their hands or feet cut off as punishment.</p> <p>After independence, the dictator Mobutu reigned for 32 years, looting his country of some 5-billion dollars.</p>
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	<p>After Mobutu was ousted in 1997, the Congo descended into carnage. What began as an invasion by Rwanda and Uganda to root out the militias behind the Rwandan genocide soon exploded into an African world war.</p> <p>Nine neighbouring countries joined in, eager to secure their borders, and greedy to share in the spoils.</p>
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PATRICK SMITH, UN Panel of Experts, Illegal Resource Exploitation, DRC “Some of the neighbouring countries were exploiting the war in the Democratic Republic of Congo, absolutely literally, they were sending their armies in and they were actually looting the mineral proceeds from that war. They were taking out cobalt, copper, diamonds, gold, you name it.”

	<p>President Joseph Kabila finally called a truce, signing peace deals with the country’s neighbours and inviting its rival rebel groups into a transitional government.</p> <p>But Kabila’s Congo is democratic only in name. His rebel army – now the official armed forces – is as cruel and brutal as any of the rebel groups.</p> <p>Elections due this month have been postponed. And the ransacking of the country’s resources goes on</p> <p>The pillage was documented in a report for the United Nations in 2002, which told how minerals worth 5 billion dollars had been stolen in the previous three years in areas controlled by the government.</p> <p>The report exposed “embezzlement, tax fraud and extortion”... “the use of stock options as kickbacks”... along with “smuggling, false invoicing, non-payment of taxes and bribery”.</p>
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PATRICK SMITH

“It is basically theft, individuals coming in, into the country, with armies, with often big companies in tow, some African companies, some international companies and taking advantage of a war-torn country. And often it has to be said, they’re taking advantage of that country with the active collusion of government in officials in Congo itself.”

	<p>In Kinshasa, I arranged to meet a key figure exposed in the UN report.</p> <p>His name is Katumba Mwanke. Remember that name - he becomes a crucial figure in our story.</p> <p>A veteran politician and right-hand man to President Kabila, Katumba Mwanke was named in the UN expose as “a key power broker in mining deals”.</p> <p>His clout comes from being the president’s strongman in the mineral-rich southern province called Katanga.</p>
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MICHEL BONNARDEAUX, Director UN Radio Okapi

“Katumba Mwanke is a very important figure in Congolese politics, most especially from the Kabila clan. As governor of Katanga, he would be the one that mineral companies would negotiate with and make deals with for the exploitation of mineral resources in the part of Katanga that was controlled by the Kabila government.”

	<p>The province of Katanga was where we headed next, a two-hour flight from the capital Kinshasa.</p> <p>Katumba Mwanke’s power-base, Katanga lies in the Congo’s south east, famed for its copper belt.</p> <p>It’s the economic and political heart of the country. It’s also the home of the Australian mining company at the centre of our story.</p> <p>And it’s a crucial stronghold for President Kabila.</p>
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MICHEL BONNARDEAUX

Q “How important is it to Kabila to keep control of Katanga?”

A “It’s extremely important because it’s where he draws most of the money that he needs to govern. The fact that Kabila is from Katanga makes it even more important because he wants to hold, that’s his power base. So not only does he need it politically but he also needs it economically.”

	<p>The provincial capital Lubumbashi is positively affluent compared with the rest of the Congo.</p> <p>But the pillaging of its minerals is a cause of deep resentment</p>
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	here, fuelling murmurs of secession ever since 1960, when Katanga briefly declared itself a separate state.
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	<p>Lubumbashi’s famous landmark is its mountain of slag – a fitting monument to the Congo’s plunder.</p> <p>The old copper mine and processing plant now lie abandoned. The state mining company, gutted by Mobutu, finally went bust and 20,000 people were thrown out of work</p> <p>But the tailings are still making a fortune for the foreign mining companies that moved in.</p> <p>The slagheap contains deposits of the mineral germanium, used in satellites and optical fibres, worth 2.5 billion US dollars, which are now being stripped by a Belgian company, and shipped, along with most of the profits, overseas.</p>
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PATRICK SMITH..

“Foreign mining companies see the Congo as one big Christmas present.”

TRICIA FEENEY

“A number of junior mining companies, far from shunning areas of conflict, rush to them because that’s where they can suddenly make big time and become major players.”

PATRICK SMITH

“It has these huge minerals that have attracted these companies but they saw well, there’s, you know, there’s no government structure for us to interact, all the government officials we meet are on the take, so we just behave like it’s the wild west.”

	<p>It must have seemed like El Dorado - to the small Australian mining company that ventured here in the late 1990s, in the dying days of Mobutu.</p> <p>Lubumbashi was 10,000 kilometres from home... home being this office in Perth, Western Australia - the headquarters of Anvil Mining.</p> <p>It was here that we would finally catch up with its chief executive, Bill Turner, the man who put Anvil on the map.</p> <p><i>“OK, this is Congo, it’s a very large country, about the size of Western Europe.”</i></p>
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	<p>Back when he first went to the Congo, Bill Turner was Anvil’s only employee. The company had never mined a thing.. its shares were worth five cents.</p> <p>But Turner had big plans.</p>
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BILL TURNER, CEO, Anvil Mining

Q “It’s been a company-maker hasn’t it in your words?”

A “Yes, well...”

Q “I mean just a few years ago, you weren’t even sure this company was a going concern?”

A “That’s right, it is a company maker, and that’s why we went to Africa, to find a deposit that could make this company.”

	<p>Our journey in the Congo continued, as we followed the path that Bill Turner took back in the ‘90s as he set out to make his fortune.</p> <p>It took us 350 kilometres north of Lubumbashi, to a remote settlement of mud-brick houses on the banks of Katanga’s Lake Mweru.</p> <p>When Turner made the trek here, there were no flights. It took him five days to go by road.</p> <p>Thankfully we were able to fly... though we then had to walk five kilometres to the town.</p>
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	<p>The town of Kilwa is a typical Congolese village. As poor as the dirt from which the people build their homes.</p> <p>They have no running water except for the communal wells... and no electricity.. The children make their toys from bits of copper wire.</p> <p>Luckily they have the lake and a plentiful supply of fish, on which they survive... though precious little else.</p>
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	<p>In this impoverished backwater, little wonder that people were incredulous when the man from Australia showed up with his plans for a mine.</p>
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BILL TURNER

“They just didn’t believe that a small company out of Western Australia could go to a place such as that, a very remote location, in a place such as Congo and actually carve a mine out of nothing, which is what happened.”

	<p>Out of the forest 50 kilometres from Kilwa, Turner and his colleagues carved Anvil’s Dikulushi mine.</p> <p>It’s the biggest mine currently operating in all Katanga province and - according to Anvil - probably the highest grade copper and silver mine in the world.</p>
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	The bonanza has given this tiny Perth company a market capitalisation of 100 million US dollars... and seen its profits rise more than 500 percent.
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LES “DOG” MELROSE Mine Manager, Anvil Mining	<p><i>Q: So what quantity of minerals are you taking out each day?</i></p> <p><i>A Ah there’s actually out of the mine there’s, we move about eight to half thousand BCMs or 1600, ah 16,000 tonne of material a day..”</i></p>
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	<p><i>Man on radio: “What is the position of the barge?”</i></p> <p>Every day, Anvil’s barge hauls four to six truckloads of concentrate across Lake Mweru, bound for the smelters of South Africa and Namibia.</p> <p>And every day another fleet of trucks returns empty, ready to load up again.</p> <p>Each truck carries 30 tonnes... and each tonne fetches 3000 dollars. It adds up to around half a million dollars worth for every day they ship.</p>
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BILL TURNER

Q So give us the inside story. How did a tiny Perth company, a one-man operation, basically, get hold of one of the most lucrative mining concessions in the world?”

A “Ah, by just being there at the right time.”

Q “What political assistance did Anvil have in obtaining what it obtained?”

A “Political assistance. Mm. I don’t think, I mean we, we didn’t have any political assistance, we just...”

Q “No political assistance?”

A “Well what do you define as political assistance?”

Q “Well, assistance from politicians.”

A “None.”

Q “None?”

A “None whatsoever.”

	<p>But there’s more to the story than Bill Turner is letting on. 4 Corners can reveal the real secret behind Anvil’s success.</p> <p>It’s this man – remember him?... President Kabila’s top aide, Katumba Mwanke... named in the UN’s report as a key player in the 5 billion dollar mineral theft. The report said he should be</p>
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	<p>banned from travelling and have his assets seized.</p> <p>Katumba Mwanke is also a key player in Anvil Mining.</p>
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<p>KATUMBA MWANKE</p>	<p>I met Katumba in Kinshasa at the poolside bar of our hotel. We filmed the encounter. He hasn't responded to our request for an interview.</p> <p>He told me he knows Anvil well. He even had Bill Turner's number stored in his phone.</p> <p><i>"If you want more about Anvil Mining I can give you the telephone number of Bill Turner. OK. So when you in Australia you can speak to him – 61 – I'm giving you like international – 61 –89..."</i></p> <p>Katumba denied he had any role in Anvil Mining.</p> <p><i>Q: "Do you have any business relationships with them?"</i> <i>A "No, no, not at all."</i></p> <p>Bill Turner denied it as well.</p>
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BILL TURNER

Q "What is Katumba Mwanke's role in Anvil Mining?"

A "He has no role in Anvil."

	<p>You certainly won't find Katumba's name on any record in Australia. But documents we obtained in the Congo tell a very different story.</p> <p>The truth is that Katumba Mwanke was a founding board member of Anvil's wholly owned subsidiary, Anvil Mining Congo.</p> <p>His name appears as a director in the minutes of the company's very first board meeting in November 2001... and again in later meetings in 2003 and 2004.</p> <p>All of these meetings - which the minutes record as having discussed routine company business - were chaired by Bill Turner.</p>
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BILL TURNER

Q "So you're saying he has no role in the company?"

A "He doesn't have any role presently in the company, no."

	I had to ask him three times before Bill Turner suddenly remembered Katumba’s role as a member of Anvil’s Congo board.
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BILL TURNER

Q “So tell me, what was Katumba Mwanke doing on the board of Anvil Mining?”

A “He was the government representative on the board. The government has the right to appoint someone to the board of your company.”

Q “OK, well you told me just a moment ago that he had no role in the company.”

A “Well he has no role in the company now.”

Q “Well he was on the board for at least three years as far as board minutes we’ve seen.”

A “Well a couple of years, I can’t remember.”

Q “Well can you tell me what his role is in the company or was in the company?”

A “His role was the government representative on the board of the company.”

	A former Minister for Mining, Eugene Diomi Ndongala – who was himself sacked for corruption last year – describes Katumba Mwanke as the “protector” of Anvil Mining.
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EUGENE DIOMI NDONGALA, Minister for Mines, 2003-2004

(Translation) “It was he who most negotiated the interests of Anvil Mining, that is to say the conventions of Anvil Mining where it was he who tried to promote Anvil Mining in relation to his contacts and his relations, and so he is someone who helped Anvil Mining a lot I think, because he intervened a lot for Anvil Mining.”

	A local NGO in Lubumbashi called ASADHO has done its own investigations into Anvil Mining and Katumba Mwanke’s role in its success.
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FREDDY KITOKO, African Association for the Defence of Human Rights

(Translation) “The problem with Anvil Mining is that in relation to the mining exploitation it is a company that does not pay any taxes to the government. In fact it signed an agreement with the government to be exempt from taxes. This facility was arranged by Katumba Mwanke who is the former governor of the province of Katanga.”

BILL TURNER

Q “How much do you pay Katumba Mwanke for his role in the company?”

A “We have paid him um directors’ fees when we have board meetings and I suspect that I think we’ve probably had three board meetings where he’s been present and we pay him a fee for those board meetings.”

Q “And how much is that?”

A “I think it was about \$1500 or \$1000, something like that.”

Q “And what’s his financial stake in the company?”

A “None.”

Q “No shares?”

A “Absolutely no shares.”

Q “No stake in the company?”

A “No cash, no stake in any company, no financial gain other than the fees that we’ve paid him for probably three directors’ meetings.”

Q: “I understand that Anvil’s headquarters is in the compound owned by Katumba Mwanke?”

A “Yes we rent that house from him.”

Q “How much rent do you pay him?”

A “It’s a commercial figure, I think it’s three and a half, 4000 dollars a month, something like that.”

Q “So therefore Mr Katumba is making in the order of US\$50,000 from you in rent per year?”

A “We’re renting a house from him at commercial rates.”

Q “Well that’s a financial benefit isn’t it?”

A “Well it is a financial benefit, I suppose, yes.”

Q Whose interests does Katumba Mwanke represent in his dealings with Anvil – his own or President Kabila’s?”

A “I think he’s got, he’s a person who has some vision for where the country might go. He sees us as a good corporate citizen and because we’re working in his backyard he supports us and why would not he do that? Why wouldn’t he do that?”

	<p>Anvil’s claim to be a good corporate citizen was left in tatters by events that began in Kilwa one night in October last year.</p> <p>What unfolded here proved just how close Anvil Mining and the Kabila government really are - and the lengths they’re willing to go to protect their common interests.</p> <p>We began to ask people about these events the night that we arrived in Kilwa.</p> <p>They told us it began in the early hours of Thursday October the 14th... when people throughout the village woke to the sound of gunfire.</p>
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ADELE NWAYUMA

(Translation) “It was two in the morning when we heard gunshots, it was night time and we didn’t know where they were coming from.”

	Adele Nwayuma was at home with her eight children when the shooting began.
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ADELE NWAYUMA

(Translation) “We came out of the house, following people. We had a lot of things in the house, so two of my boys stayed behind to look after them. I left with my girls and my little boy.”

	By dawn, word spread that a small band of rebels had taken over the town. They numbered barely half a dozen, as the UN learned when it later sent a team to investigate.
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KEMAL SAIKI

“It’s not to belittle this incident, but in the general picture of chaos and instability in the war that took place in the Congo, it’s extremely, I mean it’s a very minor incident.”

	The eight soldiers based in Kilwa had run away when the shooting started. The rebels took over the police station, and then began calling for calm. They held a meeting at the village store and urged the people to support them.
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KITENGE KALUNGA

(Translation) “The rebels told us that they did not come to cause chaos, all they wanted was peace and unity amongst the people.”

	As the UN’s Radio Okapi reported, the rebels called themselves the Revolutionary Movement for the Liberation of Katanga. Their leader, a man called Alain Mukalai, had Anvil Mining in his sights.
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MICHEL BONNARDEAUX

“They complained, or, what is said is that Alain Mukalai tried to use the fact that Anvil mining had little community involvement or what is perceived to be little community involvement in order to get the pop... rally the population behind his cause, which was the overthrow of the authorities and the secession of Katanga.”

	After recruiting a few dozen supporters, the rebels headed for the Anvil depot at the port. They looted Anvil’s trucks - stealing fuel, food and batteries. Although the rebels never got near the mine, 50 kilometres away at Dikilushi, Anvil’s operations were shut down... and trading in the company’s shares was halted on the Australian stock
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	exchange.
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LES “DOG” MELROSE

“The expats on site were evacuated. There was only myself and two head of security managers that were left on site. Ah the people were evacuated six hours drive to a place called Dubie with an airstrip and we actually flew them to Lubumbashi for their own safety.”

	Anvil’s chief Bill Turner was back home in Perth when he learned what had happened.
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BILL TURNER

“There would have been quite a lot of communication going on as to what the situation was, the military wanting to find out from us what we knew of it and we were wanting to find out from them what sort of risk this posed for the mining operation and the people, particularly the people at the mining operation.”

	For such a minor uprising, the news caused great consternation in Kinshasa. Clearly there was much at stake. President Kabila sent Katumba Mwanke and his top security adviser straight to Kilwa. At headquarters in Lubumbashi there were hurried talks with the government and the armed forces about what should be done.
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MICHEL BONNARDEAUX

“What we were told is that initially the general in charge of that military region wasn’t very worried. He’s used to commanding large numbers of troops so he probably thought it was rather a small incident. We did learn however, later, that he had received a call from the presidency and - he had told us that he’d received a call from the presidency telling him to quell the rebellion, quash the rebellion in Kilwa.”

Q: “Why was it taken so seriously by the president?”

A “Um well, what is rumored is that there is obviously a financial interest. Whatever interest Anvil has is also in the interests of the authorities, both provincial and country authorities, so it was imperative that the mine would start operating again and generate income again.”

PRESS RELEASE / GRAPHIC	After a flurry of phone calls, Bill Turner released a statement in Perth... saying that the government had advised Anvil it was moving quickly to return the situation to normal within 72 hours... even though the rebels posed no real threat to the mine.
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BILL TURNER

“As I said in the press release that I issued on the Friday here in Perth that the leader of this rebel group was the guy that wasn’t in military uniform and was wearing sandals – so a pretty ragtag group of people came in. Taking the military and the police headquarters in Kilwa is not an insignificant event and you would imagine that the Congo military would want to take some serious action.”

	What Turner didn't mention in his statement was that the military's action depended on Anvil's help.
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BILL TURNER

"They requested assistance from Anvil for transportation. We provided that transportation so they could get their soldiers down to Kilwa."

Q "So what did you provide?"

A "We provided some vehicles, I'm not sure how many. We provided vehicles for soldiers to get down there, which is.."

Q "To bring them to Kilwa?"

A "To bring them to Kilwa."

Q "How many vehicles?"

A "I got, I got no idea."

Q "Two, five, 10?"

A "No idea."

Q "You must have a bit of an idea, whether it was one or a dozen?"

A "What difference does it make how many vehicles, there were a group of soldiers and whatever number of vehicles that were necessary to move these guys, I guess we sent up there and they moved them down."

Q: "And I understand you also flew in troops from Lubumbashi?"

A "I think they were flown in on the back-loading, when the plane went up there to get our people, um the plane would have had soldiers on, we took our people out."

Q "So you brought soldiers on your plane?"

A "We would have brought them on the plane, yeah."

Q "Do you know how many soldiers you brought in?"

A "I've got a feeling there was 80 or 100 soldiers, sum of that number."

Q "Was that one planeload or more than one planeload?"

A "Ah more than one planeload.

Q "Must have been several plane loads wasn't it?"

A "Well we had, we probably had 3 or 4 plane loads just to get our guys out."

Q "And so what, brought three or four plane loads of soldiers back in?"

A "Well they would have come in the back loading, yeah."

	On the afternoon after the uprising, the 62 nd brigade of the Congolese armed forces rolled into Kilwa. As the UN investigators later reported, the soldiers "launched their attack, with vehicles provided by... Anvil Mining".
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	<p>As rumors spread that the government soldiers were coming the people started to flee for their lives into the surrounding countryside. By the time the troops arrived most of the population had left. The lightly-armed insurgents gave up without a fight, and it took the army less than two hours to recapture the town – with no casualties.</p> <p>It was then that the killings began. The soldiers went house to house. Anyone suspected of supporting the insurgents was shot on sight. A military source told the team of UN investigators that later travelled here that the soldiers were under orders to shoot on anything that moved.</p>
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KITENGE KALUNGA

(Translation) “They started searching and killing people in their houses and looting the shops.”

ADELE NWAYUMA

(Translation) “My sons were in the house when the soldiers arrived. They took the boys out and shot them and they looted the house.”

	<p>Adele Nwayuma had left her two sons behind to guard the family home. It was the last she saw of them.</p>
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ADELE NWAYUMA

(Translation) “At the time I wasn’t sure they were dead. But then I saw the soldiers with my sons’ bicycles. They were using them to carry the things they’d stolen. Then I realised my sons were dead.”

	<p>Albert Kitanika tried to run away with his father but they were caught by soldiers driving an Anvil mining truck.</p>
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ALBERT KITANIKA

(Translation) “We started running but the soldiers caught us and started searching our belongings. They arrested my dad and two other boys. They put the boys into the Anvil Mining truck. They came for my dad. I asked them, ‘Where are you taking him?’ and they didn’t answer. They took him 50 metres down the road where they shot and stabbed him to death. After, they came looking for me, saying ‘We heard his son calling for him. Where is he?’ But it was God who saved me because the soldiers didn’t identify me.”

	<p>He says the soldiers were using Anvil vehicles to round up the men they arrested.</p>
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ALBERT KITANIKA

(Translation) “They were in a white Isuzu pickup truck driven by a heavily built soldier – the same man who killed my father. I was hiding behind one of the trucks and they couldn’t find me. They put handcuffed prisoners into the trucks and drove off to the village, where they started looting and killing people.”

	<p>Detainees like Paul Kabulo watched in horror as their fellow villagers were killed.</p>
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PAUL KABULO

(Translation) “They arrested three people, tied them to a tree and beat them to death. I saw it with my own eyes.”

	With a ferocity out of all proportion to the incident, the soldiers terrorised the villagers and looted their homes, using Anvil Mining vehicles.
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PAUL KABULO

Q: “What did the Anvil Mining company do to assist the soldiers?”

A (Translation) “Anvil Mining offered them cars which they used to carry the things they stole from us. They used their trucks for looting the houses and shops.”

PIERRE MUSOPELO, Former Police Commander, Kilwa

(Translation) “Most of the vehicles involved in the operation belonged to Anvil Mining. Indeed all the vehicles used by the soldiers and the military for patrol and security were from Anvil Mining. I witnessed that personally.”

	The local police chief, Pierre Musopelo, was accused of collaborating with the rebels and arrested. He was taken to this mud-brick guest-house, being used as a makeshift prison.
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PIERRE MUSOPELO

(Translation) “There were 48 prisoners in total. We were put in such a small room that we could hardly breathe. We were even forced to undress because we were sweating, and so hot that some of us died.”

	They were held in that room, he says, for three days, except for the ones taken out to be killed.
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PIERRE MUSOPELO

(Translation) “Some of them were tortured to death in front of us, some of them were so badly beaten that their ribs were broken and they were vomiting blood. Inside the prison, I was thoroughly beaten in the ribs, and slapped on the ears, so that even today I can hardly hear because of the torture.”

	The parish priest, Father Champo - who was also accused of collaborating - was detained at the Anvil Mining guest-house in Kilwa, which was also at the army’s disposal. Six days after the uprising, both he and the police chief Musopelo were taken to the local airfield and then flown to Lubumbashi to be imprisoned - courtesy of Anvil Mining.
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BILL TURNER

Q “I also understand that Anvil planes were used to transport arrested people?”

A “Anvil doesn’t have any planes.”

Q “Well, the aircraft that were used to bring in the soldiers, which you agree –

A “Yes –“

Q “Were provided by you, were also used to transport detainees back to Lubumbashi. Is that correct?”

A “I think some people did go back to Lubumbashi on the planes that we were sending people out on, yes.”

Q “People who were arrested?”

A “I think they did, yeah. Again a request from the military of the legitimate government of the country.”

	<p>Some of the men who had been arrested were driven down this quiet stretch of road on the outskirts of Kilwa.</p> <p>Albert Kitanika – the boy who saw his father shot – took us with his brother, to the place where at least 21 men were either killed or their bodies dumped.</p> <p><i>“When they killed people in the village they put them in the trucks and brought them here. Then two soldiers threw the bodies over there.”</i></p>
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	<p>It was here that Albert and his brothers found their father’s body, not far from where he was killed.</p>
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HUBERT TSHISWAKA, Action Against Impunity for Human Rights

“This is the father’s grave, the place where they buried his father.”

Q “How did they find his body?”

A “The father’s body was found somewhere there where he was shot, and his first-born took it from there to bury it here and he called all the family to see the place where they buried the body of their father.”

	<p>It was also here that Adele Nwayuma eventually found the bodies of her two sons.</p>
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ADELE NWAYUMA

(Translation) “I was confused, I couldn’t find my children. The villagers began going to the Red Cross – and then we were told that our children’s bodies had been picked up and thrown in a ditch.”

	<p>This then was the end of our journey - a lonely swamp in a clearing among the reeds. It’s since been examined and verified by United Nations investigators as the location of two mass graves, where the bodies of murdered villagers were dumped.</p>
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HUBERT TSHISWAKA

“In this water, in this water there is seven bodies. Just somewhere here there is 12 bodies and the single grave there.”

Q “So 20 people buried in this spot?”

A “Yeah, in this area.”

	<p>The UN investigators found that some of those buried here were killed on the spot. Among them were 14 men who were brought here and ordered to kneel on the edge of a shallow grave, then shot one at a time in the back.</p> <p>In an unreleased draft report, the UN team documented “more than 100 deaths”, including “at least 28” which they said “might have resulted from summary execution”.</p>
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BILL TURNER

Q “Eye witnesses have told us that Anvil vehicles were used to transport people who were arrested to the places where they were executed.”

A “I have no knowledge of that.”

Q “You have no knowledge of that?”

A “No knowledge.”

Q “You just put up your hands and say I have no knowledge?”

A “I have no knowledge of that.”

Q “Well there are numerous eyewitness accounts of this happening?”

A “I have no knowledge of that.”

Q “Do you deny it happened?”

A “I have no knowledge of it and as far as I’m concerned it never happened.”

	<p>Bill Turner’s defence may soon be put to the test.</p> <p>Lawyers from the NGO ASADHO are working with the British agency, RAID, to bring Anvil to account.</p> <p>They’ve asked the Australian law firm, Slater and Gordon, to advise on whether the company or its principals can be prosecuted under Australian law.</p>
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RICHARD MEERAN, Slater & Gordon

“Australia has similar laws to those of the international criminal court in The Hague to deal with crimes against humanity, war crimes. For instance, the killing of, systematic killing of civilians and torture. Those are now crimes under Australian national law.”

	Richard Meeran says whether anyone at Anvil has a case to answer depends on establishing their intention in assisting the military and their knowledge of the likely consequences.
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RICHARD MEERAN

“If an Australian national assists someone else in committing those crimes, then that assistance itself will constitute a crime under Australian national law.”

	Three days after the uprising at Kilwa, Anvil’s mine was re-opened. The company later made a statement saying the return to work was carried out “efficiently and without incident”, and that “the government and military response” had been “rapid and supportive of the prompt resumption of operations”.
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BILL TURNER

“There were a number of deaths, um I don’t know how many, it’s unfortunate, it’s a terrible sort of event and it’s not something that you know that we like to see happening, but...”

Q “But after the event, you praised the actions of the authorities, you appeared to be quite happy with what they’d done to resolve the situation and restore operations at the mine?”

A “Well, where does that come from?”

Q “Well, you put out a press release.”

A “We put out a press release.”

Q “It was referred to in a later company report.”

A “That said what?”

Q “It said words to the effect of the authorities took quick action to resolve the situation and Anvil was pleased with this.”

A “Well wouldn’t you be pleased if you had a mining operation up there where there was a potential threat to the lives of 600 people?”

Q “Well not necessarily if dozens and dozens of people were killed in the process.”

A “Look, a rebel group came in and took over the military establishment and took over the police, ah the police station in Kilwa, you don’t take, you don’t do those things if you don’t want to get shot at.”

	<p>Anvil has continued to prosper in the Congo.</p> <p>It’s recently increased production by 50 per cent and announced plans to extend the mine’s lifetime by going underground. It’s also secured two new mining projects, thanks to the assistance of its protector, Katumba Mwanke.</p> <p>Since the events of last October, Anvil has made sure it’s seen to be sharing its enormous spoils... spending some of the 10 per cent of the mine’s equity that it claims to hold in trust for the benefit of the people.</p> <p>The company has built a school near the mine... and is spending</p>
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	\$200,000 refurbishing the Kilwa hospital, with electricity, new paving and a fresh coat of paint.
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BILL TURNER

“We are doing some damn good stuff and it would be kind of pleasant if people were to focus a little bit on some of the good things instead of picking some tiny little aspect that someone thinks they’ve got some hold on to blow up into something that is totally irrelevant to what we’re doing.”

Q “So you think this is a tiny little aspect and it’s totally irrelevant?”

A “What is a tiny little aspect?”

Q “Well what we’ve just been talking about.”

A “Well there are a number of things that you talked about I think are totally irrelevant to what we’re trying to do.”

Q “And what about all the civilians who were killed?”

A “I don’t know, I don’t know, I don’t know, we were not part of this, this was a military action conducted by the legitimate army of the legitimate government of the country. We helped the military get to Kilwa and then we were gone, whatever they did there, that’s an internal issue, it’s got nothing to do with Anvil. It’s an internal government issue, how they handle that is up to them, no involvement of us, absolutely.”

Q “Well except that they used your vehicles to move their troops in.”

A “So what? So what?”

Q “To move their troops around.”

A “So what?”