

RAID
Rights & Accountability in Development

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22 July 2005

Mr. Thomas R. Vant
Business and Industry Advisory Committee
13/15, Chaussée de la Muette
75016 Paris

Dear Mr. Vant:

As you know, the OECD Investment Committee has been discussing the responsibilities of multinational enterprises operating in post-conflict countries and countries with weak governance for some time, largely in response to the UN Panel of Experts' reports on illegal exploitation of natural resources in the Democratic Republic of Congo (DRC). We welcome the Committee's ongoing work to develop specific guidance for businesses operating in these environments, and applaud the Group of Eight leaders for recently reaffirming their commitment to this work in their 2005 Communiqué.

We are writing to share with BIAC some information on a series of recent events involving Anvil Mining, an Australian-headquartered and Canadian-listed company. We believe these events exemplify in the starkest of terms the need for BIAC's affiliates to seriously reflect and give feedback on the level of specificity businesses could use when operating in post-conflict countries and countries with weak governance.

In October 2004, a small-scale uprising led by a small band of rebels calling themselves the *Mouvement Revolutionnaire pour la libération du Katanga* (Revolutionary Movement for the Liberation of Katanga) was put down by the Congolese Armed Forces with disproportionate force and violence. The Lubumbashi regional office of *Mission de l'Organisation des Nations unies en République démocratique du Congo* (MONUC), the organization established by the United Nations Security Council to monitor and maintain the cease-fire in the DRC, conducted an investigation soon after this incident 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 the prominent Congolese human rights organization, *l'Association africaine de défense des droits de l'homme* (African Association of the Defense of Human Rights or "ASADHO"), 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 ASADHO 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 from the massacre.

On June 6, 2005, the Australian Broadcast Corporation's "Four Corners" program aired a documentary about the Kilwa massacre and the logistical role played in this incident by Anvil Mining.¹ The documentary also includes footage of ASADHO's work to investigate the killings and human rights violations that were committed. Soon after the Four Corners' broadcast, ASADHO called on the Congolese authorities to conduct a prompt and impartial inquiry into the events that occurred at Kilwa, including Anvil's role.

In the past two weeks, ASADHO has been the subject of threats and intimidation for their work to investigate and seek justice for the victims of a Kilwa incident. These threats and appeals to tribal hatred are being carried out in the name of Anvil Mining. Last week, RAID wrote to Anvil President Bill Turner to request that the company issue a public statement deploring the intimidation and threats against ASADHO. We have since received a written response that can be described as brief and cautious from Mr. Turner; however, he has refused to publicly condemn the campaign of intimidation against ASADHO.

As you can imagine, Anvil's response is very troubling. Through the company's refusal to make a public condemnation, Anvil is signalling both to the local actors threatening ASADHO and to the international community that it condones these activities. We refer to you the attached letter from RAID to Anvil President Bill Turner for further details.

While BIAC and NGOs often find themselves on opposing sides on a variety of policy debates at the Investment Committee, we believe we share a mutual desire to ensure human rights are respected and believe that civil society groups play an important role in strengthening governance in post-conflict countries like the DRC. We also have confidence that BIAC and its affiliates recognize that it is absolutely inappropriate for foreign investors to be complicit – through inaction or otherwise – in campaigns of intimidation against non-governmental organizations.

We are in contact with MONUC, the Canadian and Australian governments, and the World Bank's Multilateral Investment Guarantee Agency (which provided a risk guarantee for the Dikulushi project). While the investigation of Anvil's role in the Kilwa incident (as well as other questions as to the propriety of the company's relationship with a Congolese political official) is

¹ A transcript is available at: www.abc.net.au/4corners/content/2005/s1384238.htm.

underway, one thing is clear: Anvil failed to adhere to the *Voluntary Principles on the Use of Security Forces*.

These 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.

While it remains to be seen whether Anvil fully understood its responsibilities under the Voluntary Principles, we believe there are several critically important lessons to heed from the Kilwa tragedy:

- First, developing guidance for multinational enterprises operating in post-conflict countries and countries with weak governance strictly on existing OECD instruments will not be adequate.
- Second, the new guidance must be absolutely clear that foreign investors should take exceptional efforts to protect human rights, consistent with international norms and standards, as stated in the *OECD Guidelines for Multinational Enterprises*.
- Third, threats against non-governmental organizations or citizens in the name of foreign investors should not be tolerated, and companies have an obligations to publicly condemn these activities when they occur.

We therefore strongly encourage BIAC to initiate a dialogue with its affiliates on these important issues to ensure its input at the Investment Committee reflects its affiliates' current perspectives. We believe that many multinational enterprises would welcome more specific guidance on operating in post-conflict countries and countries with weak governance, including information on existing and emerging standards that fall outside the OECD's purview.

Yours sincerely,



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Colleen Freeman
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Cc: Manfred Schekulin, Chair, OECD Investment Committee