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RAID

RIGHTS & ACCOUNTABILITY IN DEVELOPMENT

The Honourable Robert Douglas Nicholson
Minister of Justice and Attorney General of Canada
Department of Justice
284 Wellington Street
Ottawa, Ontario
K1A 0H8
Canada

March 6th 2007

Dear Minister

Re: Request for action from the Canadian Government with respect to the Kilwa massacre in the Democratic Republic of Congo (October 2004)

The Purpose Statement

Global Witness, RAID (Rights & Accountability in Development)¹ and MiningWatch Canada are non-governmental organisations that expose the corrupt exploitation of natural resources and international trade systems to drive campaigns that end impunity, resource-linked conflict, and human rights and environmental abuses.

We are writing to you in your official capacity to request the following:

- i) That a comprehensive investigation be opened by the Interdepartmental Operations Group ("IOG") into allegations against the Canadian company Anvil Mining Limited with respect to its subsidiary, Anvil Mining Congo SARC's² (collectively referred to as "Anvil"), involvement in the massacre of civilians in Kilwa in the Democratic Republic of Congo ("DRC") in October 2004;
- ii) That a comprehensive investigation be opened by the IOG into the specific allegations against Canadian national Pierre Mercier's involvement in that same massacre; and
- iii) That a response be provided affirming that action will be taken and identifying the next steps that will be taken pursuant to the *Crimes against Humanity and*

¹ Global Witness and RAID are UK-based non-governmental organisations. Global Witness also has an office located in Washington DC.

² Diagram of corporate structure, Annual Information Form for Financial Year ended December 31, 2004, p.4.

War Crimes Act enacted in 2000 (“CAHWC Act”). Please advise what steps, if any, have been taken thus far.

The Kilwa massacre

On 14th October 2004, a small uprising occurred in and around the town of Kilwa in Katanga province, south-eastern DRC. The instigators described as “naïve and poorly equipped”³ were part of a “...a poorly organized and poorly armed rebellion movement.”⁴

On 15th October 2004, the Congolese armed forces (Forces armées de la République démocratique du Congo, also referred to as “FARDC”) arrived in Kilwa to suppress the uprising. The United Nations Mission in the Democratic Republic of Congo (“MONUC”) conducted field investigations a few days after the attack into the human rights violations.⁵ According to local sources, eyewitness and survivor reports, more than 100 civilians died or were summarily executed during the FARDC's counter-attack.⁶ MONUC reports that its team was able to gather information relating to the death of 73 people, at least 28 of whom appeared to have been summarily executed.⁷ MONUC also found that the FARDC were responsible for acts of pillage, extortion and arbitrary detention.⁸

Further details of the Kilwa incident are reported by MONUC including its assessment of Anvil's conduct.⁹

Pierre Mercier and Anvil's provision of logistics and personnel

At the time of the Kilwa massacre, Anvil operated the Dikulushi silver and copper mine in Katanga province. The parent company Anvil, which is incorporated in the Northwest Territories in Canada,¹⁰ owns 90% of the subsidiary operating in the DRC.¹¹

Also at that time, Pierre Mercier acted as the General Manager of Anvil in the DRC and Deputy General Manager of Anvil Mining NL.¹²

³ UN Organization Mission in the Democratic Republic of Congo (MONUC) Report “Report on the conclusions of the Special Investigation into Allegations of Summary Executions and Other Violations of Human Rights committed by the FARDC in Kilwa on 15th October 2004” located at:

http://abc.net.au/4corners/content/2005/MONUC_report_oct05.pdf .

⁴ Ibid.

⁵ Ibid., paragraph 17.

⁶ Ibid., paragraphs 24 and 26-29.

⁷ Of the 73 victims, MONUC records that: 11 of them drowned on the lake trying to flee from Kilwa; 34 bodies were allegedly found and buried by the inhabitants of Kilwa (among them there were victims of summary executions, insurgents killed in armed confrontations with the FARDC, and civilians killed by stray bullets); and at least 28 people, suspected of supporting the insurgents, are believed to have been summarily executed. (*Idem*).

⁸ Ibid., paragraph 2.

⁹ Ibid.

¹⁰ Anvil Mining Limited, Annual Information Form for Financial Year ended December 31, 2004, p.4. Anvil Mining Limited (the “Corporation”) was incorporated pursuant to the *Business Corporations Act* (Northwest Territories) under the name Dikulushi Resources Limited on January 8, 2004. The Corporation changed its name to Anvil Mining Limited on March 12, 2004.

¹¹ *Supra* at note 1.

¹² On his business card Pierre Mercier was described as the General Manager of Anvil Mining Congo and the Deputy General Manager of Anvil Mining NL.

MONUC investigated 'the way in which the FARDC used their [Anvil's] logistics and their personnel during the counter-attack on Kilwa and the violent acts that followed'.¹³ MONUC alleges that:

"[Anvil] vehicles were used to transport looted goods as well as corpses – which may have included victims of summary executions – to the site of Nsensele where MONUC has located two mass graves and one single grave. Anvil Mining has confirmed to MONUC that the FARDC used its vehicles, but has denied that they were used to transport corpses or looted goods. Anvil Mining has also admitted that the planes sent by the company to evacuate its personnel to Lubumbashi transported around 150 FARDC soldiers to the operation zone on 14 and 15 October. These planes were also used to transfer some of the suspected rebels to Lubumbashi who had been arrested by the army after its counter-attack on Kilwa. MONUC has confirmed that three of Anvil Mining's drivers drove the vehicles used by the FARDC and that food rations were supplied to the armed forces – according to Anvil – in order to prevent any risk of the civilians being looted. Anvil has also admitted that it contributed to the payment of a certain number of soldiers."

Anvil has denied any responsibility for the deaths of the 100 people referenced earlier.¹⁴ It has expressly stated "...that it would vigorously defend any inference or allegation that it had knowledge of, or provided assistance to, FARDC in the committing of any human rights violations during the suppression of the rebel insurgency in Kilwa in October 2004."¹⁵ It has also claimed that it "had absolutely no choice but to provide the transport required by the DRC Military".¹⁶

As discussed below, Pierre Mercier, along with two South African employees of Anvil, are currently being tried in the Military Court of Katanga for complicity in the commission of war crimes related to the events at Kilwa.

Investigative and legal action in other jurisdictions

1) Kilwa Trial in the DRC:

On 12th December 2006, the trial ("Kilwa Trial") began at the Military Court of Katanga in Lubumbashi. Individual defendants, who have been accused of war crimes, include Colonel Ademar Ilunga and eight FARDC soldiers. In addition, three former employees of Anvil - one Canadian, Pierre Mercier, and two South Africans, Peter Van Niekerk and Cedric Kirsten have been accused of having:

"...voluntarily failed to withdraw the vehicles placed at the disposal of the 62nd Brigade in the context of the counter offensive of [15-18] October 2004 to

¹³ MONUC Report, paragraph 39.

¹⁴ See: Anvil confirms denial of unfounded allegations, Anvil Mining Limited news release, June 21st, 2005, available at: <http://www.anvil.com.au/PDF/2005June212005Allegations.pdf>, accessed June 2006 also see: Sydney Morning Herald:

<http://www.smh.com.au/news/World/Miner-faces-civil-suit-over-Congo-killings/2005/06/07/1117910290280.html>, accessed 9th February 2007.

¹⁵ Ibid.

¹⁶ Ibid.

*recapture the town of Kilwa" and of having "knowingly facilitated the commission of war crimes by Ademar Ilunga and his men".*¹⁷

Recent reports suggest that Pierre Mercier is no longer in DRC and has been absent during military court proceedings.¹⁸

2) Australia Action:

In addition to the trial in the DRC, an investigation by the Australian Federal Police into the possible complicity by Anvil and Australian Anvil employees in war crimes and crimes against humanity in Kilwa has been ongoing since August 2005. Civil action in the Australian courts on behalf of the victims is also understood to be in the pipeline.

The Canadian Pierre Mercier is not known to have come under investigation in that action.

3) International Criminal Court:

The International Criminal Court's Office of the Prosecutor is monitoring Anvil's involvement in the Kilwa case.¹⁹

Global Witness, RAID and MiningWatch Canada Call for a Full Investigation

The call for Canada's involvement is particularly strengthened by:

- 1) The country's ratification of the Rome Statute and subsequent implementation into national law through the *CHWCA*. As clearly stated on the Department of Justice website: "The policy of the Canadian Government is unequivocal: Canada is not and will not become a safe haven for persons involved in war crimes, crimes against humanity or other reprehensible acts regardless of when or where they occurred."²⁰
- 2) Anvil's status as a Canadian associated company listed on both the Canadian and Australian stock-exchange; and
- 3) The belief that Pierre Mercier, a Canadian national indicted by a Congolese court, has left the DRC and returned to Canada.²¹

¹⁷ No. 13160: D R Congo: Prosecution of former Anvil Mining staff for complicity in war crimes? -- Resource Extraction www.raid-uk.org 16 October 2006.

¹⁸ See: RAID website for trial updates at http://www.raid-uk.org/work/kilwa_trial.htm; MONUC Report (11 Jan 07) stated that the three civilian foreign agents were absent from the Kilwa trial on the starting date though required to appear under military criminal law. On 27 December 2006, the Military Court resumed court hearings and, for the first time, one of the Anvil employees was present in court. The other two were absent.

¹⁹ IJT-8-39-43-53

²⁰ See: Department of Justice Home page at <http://www.justice.gc.ca/en/ps/wc/index.html>

²¹ See: Proceedings of the Military Court of Katanga in the case of the Congolese Public Prosecutor and *Parties Civiles* versus Colonel Adémar ILUNGA and associates – Rôle Pénal 010/2006/ RMP 0065/2005 and Legal Update N° 2 (www.raid-uk.org). The Prosecutor noted on 13th October 2006 that Pierre Mercier had been summoned to appear in court, but had left the country for Canada. Most recently Pierre Mercier had been acting as the Director of the mining company, TIGER RESOURCES SPRL, which had provided him with accommodation. That company had revoked his work contract.

Therefore, Global Witness, RAID and MiningWatch Canada call for a full investigation by the IOG into the following two allegations:

- 1) Role of Anvil in aiding and abetting war crimes committed in Kilwa in October 2004; and
- 2) Incident and conduct surrounding Pierre Mercier's involvement in the Kilwa massacre.

Global Witness, RAID and MiningWatch Canada request that the Canadian Government advise of its intentions. Canada has acknowledged that it has a role to play in ensuring justice for international crimes²² - an investigation pursuant to the *CAHWC Act* appears imperative to ensure that due process, fairness and justice are served for the victims of such crimes in the DRC. Such action will ensure that "Canada remains a world leader in the fight to ensure that people who commit atrocities are accountable for their actions."²³

Please advise what steps, if any, have been taken thus far.

Global Witness, RAID and MiningWatch Canada support the replication of best practice examples with respect to private sector involvement in international natural resource related crimes. As exemplified by domestic action taken against timber baron Guus van Kouwenhoven in The Netherlands pursuant to the *International Crimes Act (2003)*²⁴ and in relation to events during the conflict in Liberia, this demands that countries act accountably and take the steps required to investigate and prosecute crimes committed abroad.

We are also making an inquiry to the South African Department of Justice and Constitutional Affairs regarding their intention to pursue an investigation into the two South African Anvil employees, who have been charged with involvement in the Kilwa massacre by the Congolese military court.

Conclusion

In accordance with the above, we look forward to receiving assurance and information with respect to how this matter will proceed. We can provide further information on request to the Canadian authorities in the course of any investigation and also welcome the opportunity to discuss the contents of this letter in person. Patricia Feeney from RAID and Seema Joshi from Global Witness will be in Ottawa on March 21st, 2007 and will be seeking an opportunity to discuss this in greater detail.

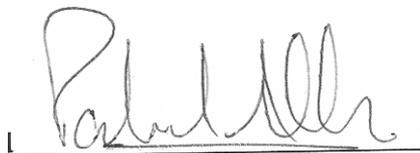
²² *Supra* at note 18.

²³ *Ibid* at <http://www.justice.gc.ca/en/ps/wc/index.html>

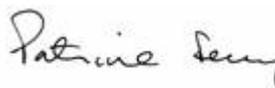
²⁴ *See*: District Court of The Hague Criminal Law Section decision (07 June 2006) located at: http://zoeken.rechtspraak.nl/dtluitspraak_print.asp?u_1jn=AY5160&u_hlquery, accessed 9th February 2007.

Please do not hesitate to contact us at +44 (0) 207 272 6731 or email: sjoshi@globalwitness.org should you have any questions regarding this letter.

Yours sincerely,



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