



**CAO Audit of MIGA's Due Diligence of the Dikulushi Copper-Silver
Mining Project in The Democratic Republic of the Congo**

Final Report

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Acronyms

ABC	Australian Broadcasting Corporation
ASADHO	Association Africaine de Défense des Droits de l'Homme
CAO	Compliance Advisor/Ombudsman
DRC	Democratic Republic of the Congo
EA	Environmental Assessment
EIR	Extractive Industries Review
ESMS	Environmental and Social Management System
ESRP	Environmental and Social Review Procedure
FARDC	Forces Armées de la République Démocratique du Congo
MONUC	Mission des Nations Unies en République Démocratique du Congo (UN Mission in Democratic Republic of the Congo)
MIGA	Multilateral Investment Guarantee Agency
NGO	Nongovernmental Organization
PRI	Political Risk Insurance
RAID	Rights & Accountability in Development
RMC	Risk Management Committee
WBG	World Bank Group

Executive Summary

Background

This report was prepared in response to a July 27 2005 request from the President of the World Bank Group, Paul Wolfowitz, for the Compliance Advisor Ombudsman (CAO) to audit the Multilateral Investment Guarantee Agency's (MIGA's) due diligence of the Dikulushi Copper-Silver Mining Project (Dikulushi project) in The Democratic Republic of the Congo (DRC).

Dikulushi is a copper-silver mine located in the Katanga province of DRC. The project has been developed by Anvil Mining, a Canadian company, and has been in production since 2002. The MIGA Board approved the project in September 2004. In April 2005, Contracts of Guarantee were issued by MIGA providing \$13.3 million of political risk insurance, including cover against damage resulting from war and civil disturbance.

In October 2004, the town of Kilwa, some 50 kilometers from Dikulushi, was taken over by a small rebel group. Kilwa is the point of export for Dikulushi copper and silver concentrates to Zambia. In reestablishing control over the town, the armed forces of the DRC allegedly killed civilians, including by summary execution, looted, and carried out other crimes including extortion and illegal detention.

At the request of the Army, Anvil Mining provided them with logistical support in October 2004, as it had done in a previous (March 2004) incident when the army engaged with a different rebel group. In July 2005, Rights & Accountability in Development (RAID), a UK-based NGO wrote to President Wolfowitz on behalf of a number of NGOs concerning MIGA's involvement with Anvil, alleging a number of failures in the due diligence preceding MIGA's support for the project.

Focus of the CAO's audit

The CAO's audit focused on the following aspects of MIGA's due diligence:

- **Security and Conflict – MIGA's 'core business' due diligence as Political Risk Insurers:** Did MIGA's underwriting or risk

management due diligence provide a framework through which security and conflict issues could have been identified and addressed; and to what extent were these issues addressed?

- **Adherence to MIGA's Environmental and Social Review Procedures (ESRPs):** Did MIGA follow its ESRPs; did these procedures provide a framework through which broader social issues, including security and conflict, could have been identified and addressed; and to what extent were these issues addressed?
- **New commitments under the World Bank's EIR Management Response:** Was MIGA's due diligence responsive to applicable commitments of the World Bank's Extractive Industries Review (EIR) management response on enhancing the development benefits of extractives projects and addressing Security and Human Rights concerns?

In order to investigate whether MIGA's due diligence was inadequate, CAO thoroughly reviewed MIGA files and had discussions with MIGA's project team, RAID, and several other NGOs, as well as Anvil Mining and IFC staff involved in the EIR.

Findings

MIGA's core business due diligence: CAO finds that MIGA adequately followed its underwriting and risk management due diligence. However, these core business processes provide a framework for addressing conflict and security issues insofar as they represent insurable risks to a project. The analysis does not address whether the project may either influence the dynamics of conflict or whether security provision for a project such as Dikulushi could indirectly lead to adverse impacts on the local community.

Environmental and Social Review Procedures (ESRPs) due diligence: CAO finds that MIGA's initial adherence to its ESRPs was adequate, but its follow-through on social aspects was weak in some key areas. For the Dikulushi project, CAO considers that the

ESRPs should have flagged the potential social impacts of the risk that the presence of the mine could exacerbate local tensions or attract rebel groups with consequent increased insecurity for local people.

In addition, CAO finds that weaknesses in the ESRP due diligence on the Dikulushi project, and in the treatment of conflict and security issues specifically, reflect a number of concerns that were the subject of recommendations by CAO in its 2002 review of MIGA's ESRPs. Many of CAO's recommendations to address these concerns had not been fully addressed in MIGA's due diligence for the Dikulushi project.

Due diligence relating to EIR commitments:

CAO finds that MIGA made an informed judgment regarding the acceptability of the developmental benefits of the Dikulushi project. CAO has specific concerns however, regarding the potential for these benefits to be realized, which could undermine the efficacy of MIGA's assumptions regarding development benefits.

Regarding the Voluntary Principles on Security and Human Rights, CAO finds that MIGA did not fully understand the implications for its client of implementing the principles nor assess whether its client had the capacity to do so. Neither MIGA nor Anvil recognized the critical distinction between conventional security, which deals with securing the safety and well-being of personnel and assets, and the Voluntary Principles, which recognize that conventional security provision can, in and of itself, present risks to the well-being of communities.

CAO also notes that in its due diligence MIGA took steps to engage with NGOs and to include provisions in the Contracts of Guarantee to reinforce the potential local benefits. CAO welcomes these developments.

Recommendations

CAO considers it essential that steps are taken to try and limit the risk of future incidents where the military or armed groups commit human rights abuses in the Dikulushi/Kilwa area, and to eliminate as far as possible the risk of Anvil's equipment being used by any armed groups at risk of committing human rights abuses. Accordingly CAO recommends that:

- MIGA should support Anvil in its ongoing efforts to fully implement the Voluntary Principles.
- MIGA should retrospectively address the shortcomings with respect to its social due diligence on the Dikulushi project. Specifically, CAO recommends that an independent field assessment be conducted of Anvil's social impacts and community engagement in the Dikulushi and Kilwa areas.
- MIGA should proactively engage with Anvil to ensure that the anticipated development benefits of the Dikulushi project are realized and that shortcomings identified by the CAO are addressed.

More generally, and of relevance to Dikulushi and other MIGA projects:

- CAO recommends that in situations where conflict, Security and Human Rights are of concern, MIGA require clients to systematically apply the Voluntary Principles
- In light of MIGA's role as political risk insurer and strong presence in conflict-prone countries, CAO recommends that MIGA play an active role in implementing the Voluntary Principles within the World Bank Group.
- At the screening stage, MIGA should ensure that all projects are reviewed by a social specialist. In the case of extractive industry projects, this should be by a social specialist with experience of this sector.
- MIGA should expand its use of specific social and environmental contractual provisions to ensure, where relevant, adherence to commitments such as the Voluntary Principles.
- CAO concludes that the logic for substantive engagement between MIGA and NGOs at the underwriting (and post-contract stage) is strong but recommends that this needs to be more effectively structured.
- MIGA should revisit the recommendations of the 2002 CAO review of its ESRPs, and move to implement them more systematically.

1. Introduction

1.1 Background

This report was prepared in response to a July 27, 2005 request from the President of the World Bank Group, Paul Wolfowitz, for the Office of the Compliance Advisor Ombudsman (CAO) to audit the Multilateral Investment Guarantee Agency's (MIGA's) due diligence of the Dikulushi Copper-Silver Mining Project (Dikulushi project) in The Democratic Republic of the Congo (DRC)¹. MIGA provided political risk insurance for the Dikulushi Project in April 2005. CAO is the independent recourse mechanism for the International Finance Corporation (IFC) and MIGA and reports directly to the President of the World Bank Group. In accordance with its Operational Guidelines², CAO screened the audit request against its appraisal criteria and accepted the audit request in early August 2005.

The Dikulushi Project involves developing and mining a copper-silver deposit located in the Haut-Katanga district of Katanga province in the DRC. The project is located about 400 kilometers by road north of the city of Lubumbashi, the provincial capital of Katanga (see Figure 1.1). The deposit and processing facilities are 54 kilometers north of the town of Kilwa on the shores of Lake Mwero, from where ore concentrates are shipped to Zambia for transfer by road to smelting facilities in South Africa and Namibia. Dikulushi has been developed by Anvil Mining Congo, SARL. The parent company is Anvil Mining Limited, a Canadian company with its head office in Perth, Australia, whose common shares are listed on the Australian and Toronto Stock exchanges. On September 21 2004, the MIGA Board approved two Proposed Guarantees for investment in Anvil Mining Congo, one for US \$6.66 million to cover Anvil Mining Limited's equity investment and one for US \$6.62 million to cover RMB International's³ non-shareholder loan to the Dikulushi project. The contracts negotiation process took a further 6 months before Contracts of Guarantee were issued by MIGA in April 2005. The CEO of Anvil Mining Limited signed the Contract of Guarantee for its equity investment on May 26, 2005.

On June 6, 2005, a **Four Corners** current affairs television program aired by the Australian Broadcasting Corporation (ABC) linked Anvil to an October 16, 2004 massacre of civilians at Kilwa by the Congolese Army, the FARDC (Forces Armées de la République Démocratique du Congo). The report alleged that Anvil had provided logistical support to the FARDC to deal with an uprising by a small band of rebels, who had recruited a few dozen supporters within Kilwa. The report stated that the FARDC had terrorized Kilwa and had killed between 70 and 100 civilians, including a number of summary executions. This prompted an internal investigation to be initiated within MIGA into the events surrounding the Kilwa massacre and any possible role played by Anvil.

On July 8, 2005, Rights & Accountability in Development (RAID), a UK-based NGO wrote to President Wolfowitz on behalf of a number of NGOs⁴ concerning MIGA's involvement with Anvil. RAID referred to the ABC report and alleged a number of due-diligence failures on the part of MIGA. In particular, RAID indicated that MIGA had failed to comprehensively examine and respond to the following concerns, which it had raised with MIGA prior to Board approval of the proposed guarantees:

¹ A copy of the audit request is attached to this report as Annex 1.

² Available through the CAO's Web site (www.cao-ombudsman.org).

³ RMB international is a wholly owned subsidiary of FirstRand, one of South Africa's largest financial services groups.

⁴ The text of this letter, which includes details of the associated NGOs, is included as Annex 2.

Figure 1.1 Location of the Dikulushi Project



Source: Anvil Mining Limited, August 2005

- The need for MIGA to comprehensively address, as part of its due diligence, the links between conflict and mining in the DRC;
- The importance of MIGA's taking appropriate steps to ensure that Anvil was complying with the *Voluntary Principles on Security and Human Rights*, consistent with the requirements of the World Bank Group's (WBG's) Management Response to the Extractive Industries Review (EIR), or 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*; and
- The failure by MIGA to identify and fully investigate the relationship between Anvil and a senior Congolese politician, Mr. Augustine Katumba Mwanke, who had been publicly named as part of an "elite network" involved in the illegal exploitation of the DRC's mineral wealth⁵.

RAID requested that the President initiate a number of investigations or reviews to address these concerns.

⁵ The allegations against Mr. Katumba Mwanke were made in UN Report S/2002/1146, the Final Report of the *Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of the Congo*.

1.2 Scope of the CAO's audit

CAO's audit addressed the following three aspects and related questions:

1. ***Security and Conflict: MIGA's 'core business' due diligence as Political Risk Insurers:***

- Did MIGA's underwriting or risk management due diligence provide a framework through which security and conflict issues could have been identified and addressed?
- To what extent were these issues addressed?

2. ***Adherence to MIGA's Environmental and Social Review Procedures (ESRPs):***

- Did MIGA follow its ESRPs?
- Did the ESRPs provide a framework through which broader social issues, including security and conflict, could have been identified and addressed?
- To what extent were these issues addressed?

3. ***New commitments under the World Bank's EIR Management Response:***

- Was MIGA's due diligence responsive to applicable commitments of the World Bank's EIR management response on enhancing the development benefits of extractives projects and addressing Security and Human Rights concerns?

To address these questions, the CAO performed a desk review of MIGA's project files and other relevant documents and held discussions with MIGA's project team and other key staff within MIGA and the World Bank Group, a number of NGO's, and Anvil employees. A field visit was not undertaken to the DRC, as the primary focus was on the efficacy of MIGA's due-diligence processes and as CAO would ultimately have to rely on secondary sources of information in relation to the Kilwa incident of October 2004. At a fairly early stage of the audit, CAO also recognized that in-depth fieldwork would likely be proposed as part of CAO's recommendations.

The primary focus of CAO's audit is on MIGA's due-diligence processes, as opposed to Anvil's management systems. The CAO audit did not consider compliance with the *OECD Guidelines for Multinational Enterprises* or the *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, as MIGA does not require client companies to adhere to these standards. Furthermore, the audit did not address certain other issues raised by RAID, including Anvil's relationship with Mr. Katumba Mwanke, which were outside the CAO's mandate. These matters have been referred to the World Bank's Department of Institutional Integrity (INT)⁶.

⁶ The Department of Institutional Integrity (INT) is designated by the World Bank Group to investigate allegations of fraud and corruption in Bank Group operations and allegations of staff misconduct. For more information see <http://www.worldbank.org/integrity>

2. Context for the audit of MIGA's Due Diligence

2.1 The Kilwa incident and subsequent events

2.1.1 Brief description

On the night of October 14, 2004, a small Congolese rebel group calling themselves the Movement for the Independence of Katanga took over the town of Kilwa. During October 15, 2004, soldiers of the 62nd brigade of the Congolese Armed Forces (FARDC) reestablished control of the town.

According to the UN Observer Mission in the Congo (MONUC), the rebel group initially comprised fewer than ten lightly armed men who encountered no resistance from the local military or police and recruited up to a hundred local youths during October 14, most of whom were without military training. The rebels looted some government offices and Anvil's fuel stores in Kilwa. Most of the residents of Kilwa (estimated population of 40,000 – 50,000) left the town after the rebel takeover and before the intervention of FARDC⁷, reportedly in fear of FARDC reprisals⁸. MONUC sent a mission to Kilwa on October 22–24 to assess the political, humanitarian, and human rights situation. The report of the MONUC investigations found that there was looting by the FARDC forces; and more than 70 people died⁹ during or immediately following the FARDC operation, of whom at least 28 were the victims of summary execution¹⁰. MONUC has called on the Transitional Government of the DRC to “open an independent and transparent investigation into these killings”¹¹. In June 2005, the commander of the FARDC troops responsible for retaking Kilwa was arrested in Lubumbashi and is currently being investigated on a number of counts.

The broad facts of Anvil Mining's involvement in the October 2004 Kilwa incident, in terms of the provision of logistical support to the Armed Forces of the DRC, are not in dispute. Anvil suspended operations at the Dikulushi Mine in response to rebel seizure of Kilwa and evacuated nonessential staff. Operations restarted on October 17, 2005. At the request of the FARDC, Anvil provided logistical support to the military during the Kilwa incident — including chartered air transport of troops from Lubumbashi to Dubie, vehicles, and three drivers. As part of its investigations into the events at Kilwa, the Human Rights Division of MONUC raised a number of questions with Anvil in writing between May and July 2005, following the visit to DRC of the *Four Corners* team, concerning the FARDC use of Anvil vehicles and staff, and the circumstances that gave rise to this¹².

In January 2005, the Katanga branch of the Congolese Human Rights NGO, the African Association for the Defense of Human Rights (ASADHO/Katanga), published a report on human rights violations in Kilwa during October 2004. The report focused on violations committed by the rebels and by government troops, based on an investigative mission in December 2004 and testimonies collected from people elsewhere in the region. This report included several references

⁷ MONUC, Rapport sur les conclusions de l'Enquête Spéciale sur les allégations d'exécutions sommaires et autres violations de droits de l'homme commises par les FARDC à Kilwa (Province de Katanga) le 15 octobre 2004. August 2005, p.1

⁸ UN Security Council document S/2004/1034, Sixteenth Report of the Secretary-General on the United Nations Organisation Mission in the DRC, 31 December 2004, para.14

⁹ This includes a number of civilians who drowned in Lake Mweru when their canoes capsized as they fled.

¹⁰ UN S/2004/1034; U.S. Department of State, Country Reports on Human Rights Practices – 2004, DRC, February 2005, p.9; MONUC, August 2005 report, p.1

¹¹ UN Security Council document S/2004/1034

¹² MONUC to Anvil Mining, 23 May 2005; Anvil Mining to MONUC, 20 June 2005; MONUC to Anvil Mining, 8 July 2005; Anvil Mining to MONUC, 14 July 2005.

to the use of Anvil logistics, but did not address the role of Anvil in its conclusions or recommendations¹³. Subsequently, ASADHO and the UK-based NGO, RAID, commissioned Australian law firm Slater Gordon to represent them in pursuit of an Australian government investigation into the October 2004 Kilwa events¹⁴.

In July 2005, a number of NGOs expressed concerns to MIGA that NGOs in Katanga who were working on the Kilwa incident were being harassed and encouraged MIGA and Anvil to issue a joint press statement disassociating themselves from threats against local human rights activists and supporting an investigation into the Kilwa incident.

The October incident followed an earlier incident involving the use of Anvil logistics by the DRC military in March 2004, where Anvil had three vehicles forcibly requisitioned, an incident that is relevant to setting the context.

In this earlier incident, the presence of armed groups in the Dikulushi/Kilwa area led to a temporary reduction of operations and evacuation of nonessential staff from Dikulushi Mine when Anvil security staff learned that a group of armed youths camped nearby was intending to march on the mine. Subsequently, there was a temporary complete suspension of operations and evacuation of all staff, following reports that the FARDC contingent sent to deal with the armed group had been ambushed and the captain leading the contingent killed. At the request of the general in charge of Katanga Province, an Anvil manager organized an airlift of soldiers and officers to Kilwa and used the return flights to evacuate Anvil staff to Lubumbashi. In response to the March incident, three Anvil vehicles were made available on request to the army to help with logistics, and Anvil's shift transport vehicle was used by the army to move airlifted soldiers to Dikulushi village¹⁵.

2.1.2 Immediate and underlying causes

The immediate cause of the Kilwa incidents was the rebel seizure of the town of Kilwa and the counter attack to retake the town by the FARDC 62nd brigade based at Pweto. MONUC's final report into its investigations on the Kilwa incidents concluded that the rebel group probably did not launch the operation on its own and was manipulated by others, although MONUC was unable to establish unequivocally by whom. There is no suggestion that the rebels sought to take over the Dikulushi Mine. Anvil's news release on October 15, 2004, noted that *'Anvil security personnel have talked with the leader of the rebel group, who has advised that his group has no intention of taking over the Dikulushi Mine.'*¹⁶

2.1.3 Anvil's immediate reaction to these incidents

Anvil's news releases on these incidents immediately afterwards noted factual aspects relating to evacuation of personnel, interruption of production, and subsequent resumption of operations. The October 15 and 18 news releases, which were sent to MIGA, noted the rebel group activities in Kilwa and the evacuation of some mine personnel in accordance with Anvil's standard procedures but made no reference to forceful requisitioning of vehicles, looting, or human rights abuses.

During the March 2004 incident, one of Anvil's senior staff was reportedly threatened by the FARDC on his initial refusal to provide vehicles, had an AK 47 rifle thrust in his stomach, and was

¹³ Report on Human Rights Violations Committed in Kilwa in the Month of October 2005, ASADHO Katanga, January 2005.

¹⁴ Slater and Gordon, Media Release, 7 June 2005

¹⁵ Anvil Mining Congo, Note for the Record, 16 March 2004.

¹⁶ Anvil Mining Limited, News Release, October 15, 2004

struck by a rifle butt¹⁷. Anvil subsequently met with the Territorial Administrator and the Colonel who was the commanding officer responsible to register its concerns at the manner in which the vehicles had been requisitioned and subsequent looting. Anvil has advised that it was provided with assurances that disciplinary action would be taken against the military personnel concerned.

Anvil did not protest at the requisitioning of its vehicles in response to the October 2004 incident, which it saw as a legitimate request to a significant security situation in Kilwa, but did express to the military its concerns that the soldiers should not engage in looting and provided humanitarian assistance in Kilwa¹⁸. Subsequent to the June 6, 2005 screening of the *Four Corners* report in Australia, Anvil provided MIGA with evidence that equipment requisitions by the military are provided for by DRC legislation dating from 1940 (Law 112, June 11, 1940). Anvil also provided retrospective written confirmation¹⁹ that it had been instructed to provide aerial logistical support by way of seats on planes chartered by Anvil to evacuate mine personnel and vehicles, to transport troops from Pweto to Kilwa. MIGA had not been notified of either the March 2004 or October 2004 requisitions until after the *Four Corners* report was screened.

Box 1. Areas of uncertainty about Anvil Mining and the Kilwa incident

The key areas of uncertainty are:

- The implications of this provision of logistical support in terms of human rights law; and
- Whether Anvil Mining managers could have anticipated the risk of human rights abuses by FARDC, and, if so, what actions they might have taken before, during, and after the Kilwa incidents.

CAO is not in a position to bring greater clarity to these remaining areas of uncertainty in the context of this compliance audit and notes that MONUC has recently published a report on the incident.

2.1.4 Notifications to MIGA

In relation to the March 2004 incident, MIGA was promptly informed of the interruptions to production and evacuations and was also informed of the logistical role played by Anvil²⁰. Subsequently in August 2004, the MIGA Board was asked four specific questions by a group of Congolese and international NGOs, which referred to the March 2004 incident (but did not explicitly refer to the use of Anvil's logistics). One question was *'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?'*²¹

In relation to the October 2004 incident, Anvil informed MIGA promptly of the start and finish of the suspension of operations at Dikulushi Mine through the news releases issued on October 15 and October 18, 2004. Other than Anvil's news releases, there were no exchanges between Anvil and MIGA, or between NGOs and MIGA concerning the incident, prior to the screening of the *Four Corners* program "The Kilwa Incident" by ABC on June 6, 2005.

¹⁷ Personal communication with Anvil's CEO.

¹⁸ Personal communication with Anvil's CEO and other Anvil managers.

¹⁹ Letter from the Governor of Katanga dated June 11, 2005, titled "Our requisition of 14 October 2004."

²⁰ Based on a review of documents in the file.

²¹ Letter to Executive Directors of MIGA, 25 August 2004.

The first exchanges between MIGA and Anvil Mining concerning the allegations of human rights abuses during the Kilwa incident and the use made of Anvil logistics was in June 2005 following broadcast of the ABC *Four Corners* program. The program was brought to the attention of MIGA by the brokers (First City Partnership Limited) who were acting for Anvil Mining in negotiations with the MIGA,²² by which time MIGA's routine media monitoring had alerted it to the broadcast.

2.2 MIGA's due diligence processes

2.2.1 MIGA's core business and interfaces with conflict and security issues

As a provider of political risk insurance (PRI), conflict and security are core business concerns for MIGA. MIGA's investment guarantees can provide coverage against the following noncommercial risks²³:

- **Transfer restriction:** Protects against losses arising from an investors' inability to convert local currency (in the form of capital, interest, profits, etc.) into foreign exchange for transfer outside of the country.
- **Expropriation:** Protects against the risk of a host government reducing or eliminating an investor's ownership of an insured investment through, for example, nationalization or confiscation.
- **Breach of contract:** Protects against losses arising from a host government breaching or repudiating a contract with the investor.
- **War and civil disturbance:** Protects against loss from damage to or the destruction or disappearance of tangible assets caused by politically motivated acts of war or civil disturbance in the host country, including revolution, insurrection, coups d'état, sabotage, and terrorism. This also provides coverage against events that lead to business interruption for a period of one year.

MIGA explicitly considers conflict and security issues in its analysis of risk factors that might ultimately lead to a claim under its guarantees against War and Civil Disturbance. It does this at two levels. Firstly, a country risk assessment is undertaken to analyze the likelihood of a future claim for losses incurred as a result of War and Civil Disturbance. This considers aspects such as the dynamics of conflict in recent years, anticipated changes, and related causal factors. Historical or current conflict and factors affecting the potential for conflict are an explicit part of this assessment. On the basis of this analysis, a country risk rating is assigned. Secondly, a project risk assessment is undertaken, which looks more closely at factors such as sectoral concerns and location-specific factors that have a bearing on the risk of a future claim against War and Civil Disturbance coverage. A project risk rating is assigned based on this project-level analysis. Both these risk ratings are then combined to give an overall risk rating, which in turn has a bearing on whether MIGA chooses to underwrite the risk and the premiums a client must pay. Simply put, the higher the aggregate rating, the higher the premium.

In summary, as an integral part of its core business practices, MIGA explicitly considers conflict and security issues risks under its underwriting and risk management procedures. It is important to emphasize that these issues are treated as insurable risks to the project, based on their assessed likelihood and consequences and therefore focus only on the risk of war and civil disturbance to

²² E-mail to MIGA from First City, 6 June 2005.

²³ For additional information on MIGA's coverage: <http://www.miga.org/screens/services/guarant/guarant.htm>

the assets or activities of the project. Neither the underwriting nor the risk management processes explicitly consider the risks that the presence of, or security provision for, a project could indirectly lead to adverse impacts on the local community. These aspects could potentially be captured under MIGA's Environmental and Social Review Procedures.

2.2.2 Environmental and Social Review Procedures

MIGA's Environmental and Social Review Procedures (ESRPs) are designed to ensure that projects comply with applicable environmental and social policies and guidelines. MIGA's environmental and social specialists are responsible for the environmental and social review, clearance, and supervision of projects. The ESRPs include the following stages²⁴:

- **Environmental screening:** On receipt of a Definitive Application to provide political risk insurance, a preliminary environmental screening is undertaken to identify key issues and categorize the project (as A, B, or C);
- **Environmental and social information requirements and review:** MIGA staff review the environmental assessment and any other available information to determine its adequacy and identify additional information required, which may involve a site visit;
- **Disclosure of review findings:** MIGA staff ensure that the requirements to disclose information on Category A projects are followed (not applicable to Category B or C projects);
- **Environmental and social clearance:** On determining that a project will comply with policies and guidelines, the environmental officer provides clearance to the guarantee officer in the form of an Environmental Clearance Memorandum;
- **Guarantee approval:** The environmental officer prepares or reviews a summary of the environmental and social review findings for inclusion in the President's Report to the Board; and
- **Project compliance:** The applicant provides representations and warranties throughout the term of a Contract of Guarantee that environmental requirements will be complied with. In addition, MIGA may periodically request warranties that a project is in compliance and may carry out monitoring visits or request specific data to verify information provided. Evidence that a project is not in compliance is grounds for canceling coverage or denying a claim.

Neither MIGA's Environmental Assessment Policy (of May 1999) nor its issue-specific safeguard policies (adopted in May 2002) explicitly address conflict and security issues, although the Environmental Screening stage of the ESRPs provides an opportunity for MIGA to identify a more inclusive and specific set of concerns in determining the appropriate extent and type of environmental assessment required. These concerns could also be flagged during MIGA's review process and its interactions with the client. The issues of Security and Human Rights have recently received more attention in the context of the World Bank Group's management response to the Extractive Industries Review (EIR).

2.2.3 Emerging commitments under the World Bank Group's EIR Management Response

On September 17, 2004, the World Bank Group published its response to the report of the Extractive Industries Review, **Striking a Better Balance**, which was the culmination of an independent consultation with stakeholders on the future role of the World Bank Group in the extractives sectors²⁵. The response outlined how the World Bank Group intended to address the numerous recommendations of the EIR, under the broad headings of Part I, Pro-poor governance;

²⁴ The ESRPs may be viewed in full at www.miga.org.

²⁵ See <http://siteresources.worldbank.org/INTOGMC/Resources/finaleirmanagementresponse.pdf>

Part II, Environmental and Social Components of World Bank Group Interventions; Part III, Human Rights; Part IV, World Bank Group Institutional Priorities; and Part V, Conclusions and Follow-up.

Many of the commitments in the EIR Management Response were time-bound and not scheduled to take effect until some time in the future (see page 16 of the response). Of particular relevance to the Dikulushi project are some of the recommendations and commitments concerning enhancing the benefits of extractives projects for the poor and relating to Security and Human Rights. In particular, the EIR first called for revenue-sharing with local communities (Part I, Pro-Poor Governance, recommendations 12, 13, and 18). The World Bank Group's Management Response acknowledged that communities should benefit overall from projects that affected them and committed to advising governments on some form of revenue returns to producing regions but recognized the rights of individual governments to establish laws and policy concerning specific arrangements.

Secondly, the EIR called for the World Bank Group (with includes MIGA) to address the human rights implications of extractives projects in a manner consistent with applicable international human rights standards. The Management Response committed to requiring clients of IFC and MIGA to follow provisions regarding the use of private and public security forces by extractives companies based on the ***Voluntary Principles on Security and Human Rights*** (see Box 2). A commitment was made to prepare a guideline for new investments by the third quarter of FY05 (January–March 2005). An internal guideline was produced for staff working on extractives projects in March 2005, but no guidelines for investment contracts have been finalized. Also on September 17, 2004, the World Bank published its response to an April 2003 report, ***Extracting Sustainable Advantage***²⁶, which the CAO had prepared as a contribution to the EIR. Recommendation 8 of this report urged MIGA and IFC to “*more systematically consider potential risks to human rights at the project level, take appropriate steps to mitigate them, and provide clearer guidance to clients on both these aspects.*” The Management Response committed MIGA and IFC to expect new investors to follow a guideline relating to the use of security forces along the lines of the Voluntary Principles.

Box 2. The Voluntary Principles on Security and Human Rights

The Voluntary Principles on Security and Human Rights (Voluntary Principles) were developed through a process of dialogue between the Governments of the United Kingdom and the United States, extractive and energy sector companies, and NGOs with a common interest in human rights and corporate social responsibility. They establish a framework through which the relationship between extractive industry companies and security providers (government and private) can be managed to ensure respect for human rights and fundamental freedoms.

The principles provide guidance on the attributes of effective risk assessments, including the risks arising from equipment transfers to public or private security (which would include logistical support by companies to state security forces). In an effort to reduce the risk of abuses and to promote respect for human rights more generally, a series of principles are elaborated to guide relationships between companies and public security. These cover the four main areas of: security arrangements; deployment and conduct; consultation and advice; and responding to credible allegations of human rights abuses by public security. The full text of the Voluntary Principles is available at www.voluntaryprinciples.org

²⁶ **Extracting Sustainable Advantage?** *A review of how sustainability issues have been dealt with in recent IFC & MIGA extractive industries projects*, CAO, April 2003.

2.2.4 Warranties, representations, and Contracts of Guarantee

In all of its underwriting activities, MIGA relies heavily on warranties and representations from both applicants and clients (guarantee holders). At the early stage of Definitive Application where a potential client submits an application to MIGA for political risk insurance, potential clients must warrant that they have not engaged in any corrupt practices vis-à-vis the host government. They must also warrant their understanding that any false or misleading information submitted in the application or subsequently may result in the termination of any contract of guarantee issued by MIGA. The Contracts of Guarantee typically include a number of specific warranties and representations. This places a heavy duty on MIGA's clients to comply with any stated commitments, warranties, or representations.

As the CAO noted in its December 2002 review of MIGA's ESRPs²⁷, there are, however, a number of drawbacks to this system with respect to the management of environmental and social risks:

“Firstly, MIGA does not systematically evaluate its client’s capacity for environmental and social management (although some informal assessment of capacity takes place). Therefore, it is difficult to have full confidence that the guarantee holder will undertake all necessary actions to remain in compliance, however well intentioned, and thus avoid adverse impacts on communities or the natural environment in the vicinity of projects. The second issue relates to the locus of reputational risk, in the event of something going wrong. From a legal standpoint, MIGA may be fully protected from liability in the event of a major adverse environmental or social impact resulting from non-compliance, but the reputational burden of such events inevitably falls disproportionately on MIGA and the World Bank Group.”

2.2.5 Key changes in MIGA's due diligence processes

The underwriting and risk management processes for the Dikulushi project spanned a considerable period during which there were important changes within MIGA and, toward the end of which, new World Bank Group commitments were emerging.

A Preliminary Application had been submitted to MIGA in early 1996, but it was not until March 2003 that the underwriting process commenced.²⁸ Anvil Mining's Definitive Application was submitted in September that year.

In May 2004, there were a number of major changes in MIGA's senior management structure, with the appointment of a new Executive Vice President (Yukiko Omura) and the departure of the former Vice President of the Underwriting Department. The new management signaled a number of significant shifts in MIGA's due diligence processes, the following of which are noteworthy:

- A new Economics and Policy Group was formed and a new Director and Chief Economist recruited to lead this group. This group oversees MIGA's work on assessing development impact, reviewing project-level risks (including environmental and social risks), and ensuring that MIGA's operations are supportive of World Bank Group country strategies. The intention was to offer a more holistic and integrated approach to assessing development impacts and undertaking economic, environmental, and social due diligence;

²⁷ **Insuring responsible investments?** *A review of the application of MIGA's Environmental and Social Review Procedures*, CAO, December 2002

²⁸ The application could not be considered until the DRC became an effective member of MIGA, which it became in February 2003.

- A critical stage of senior management and peer review formerly undertaken under the auspices of the Risk Management Committee (RMC) at a very late stage in the project underwriting and Board approval process now occurs much earlier in the process, at the Project Review Committee (PRC) stage; and
- The reorganization is also supported by additional resources to provide for more travel to host countries by professionals engaged in risk management, legal due diligence, and environmental and social due diligence.

These shifts are of relevance to the Dikulushi project as the underwriting and risk management processes took place prior to and after the changes were instituted. As a consequence, Dikulushi was subject to due diligence under both the old and new systems and had an unprecedented amount of time devoted to it.

As discussed in section 2.2.3 the World Bank Group's response to the EIR published shortly before the project was submitted to the Board introduced some new commitments. At this stage, only draft material was available to staff to assist in integrating the new commitments into their work.

2.3 MIGA's due diligence regarding Guarantees for the Dikulushi project

2.3.1 Pre-May 2004

The key due-diligence tasks of staff working on the Dikulushi Mine insurance application from March 2003 were researching the Country Risk Assessment; ESRP due diligence, and underwriting, which included both the determination of project-related risks and an iterative process of understanding the project and specifying the potential scope and terms of contracts into which MIGA might enter. During this period, the lead underwriter and a senior environmental specialist visited Anvil Mining's Dikulushi operations.

In relation to the issues addressed in this audit, specific actions at this stage of due diligence included checking investors, shareholders, and contractors to ensure that they were not listed in the U.N. report on the illegal expropriation of natural resources in the DRC²⁹ and determining how to address the fact that one of Anvil Mining's minority investors (First Quantum Minerals) was listed in this report as a company among those in apparent breach of the OECD Guidelines for Multinational Enterprises which appeared "*to have benefited from the chaotic environment of the DR Congo...*" but was subsequently listed as a case that had been resolved with no further action required³⁰. There was a focus on defining the potential development benefits of the project and securing assurance on Anvil's commitment to ensuring local benefits and its progress on finding a partner to implement the planned program (see 3.3.1). The underwriter's field visit included reviewing with MONUC in the DRC the latest available data on the relationship between the incidence of armed conflict and the location of mining operations. As discussed in section 3.1.2, extensive work was also undertaken to analyze conflict and security risks at the country and project levels. An environmental specialist also documented Anvil's security approach and arrangements during the field visit.

²⁹ U.N Report No. S/2002/1146 on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC, 16 October 2002.

³⁰ UN Report S/2003/1027, Final report of the Panel of Experts on the Illegal Exploitation of Natural resources and Other Forms of Wealth in the Democratic Republic of the Congo, 23 October 2003

The original goal was to have a proposal ready to present to MIGA's board in late 2003 or early 2004. However, the complexity of the project and continuing controversy within MIGA about whether and under what terms it should go ahead meant that this goal was not met.

2.3.2 May 2004 – September 2004 (Board date)

When MIGA's new management structures were put in place in May 2004, the due diligence on Dikulushi Mine was revisited. The project team reexamined the project and also started to engage with NGOs (see section 3.2.4). Further detailed work was done on the issues addressed in the first stage of work. Attention was also paid to considering the specific questions raised by NGOs and Executive Directors and to issues raised by the EIR and related ongoing World Bank Group deliberations, including the Voluntary Principles (see section 3.3.2).

The due-diligence and underwriting work was completed and the project submitted to the Board on September 2004, and the Board concurred that it should go forward.

2.3.3 September 2004 – April 2005 (issue of Contracts of Guarantee)

Between the time of Board agreement and April 2005 when the Contracts of Guarantee were signed, MIGA and Anvil were involved in detailed negotiations including action on requests from Anvil for higher coverage. It is unusual for this stage to take so long; it involved principally technical and legal work not related to the security and conflict issues addressed in this audit.

2.3.4 Since issue of Contracts of Guarantee

MIGA's system is that after contracts are in place, the middle office (a portfolio monitoring unit) takes responsibility for tracking client compliance with any special clauses in the contract, having been briefed by the underwriting team on the issues underlying these clauses. Projects are also monitored by underwriters and the ESRP specialists.

In the case of Dikulushi, the middle office was alerted to conditions of contract relating to the community development program and ESRP compliance. An ESRP monitoring visit is planned for October 2005. In the light of the issues and concerns raised about the Kilwa incident, internal enquiries, and discussions with the client, the World Bank Group, and others are ongoing.

3. CAO Analysis of Key Audit Aspects

The key aspects to be addressed by the audit and related questions are outlined in section 1.3. CAO's analysis of these questions is presented below.

3.1 Security and Conflict: MIGA's 'core business' due diligence

The main issues of concern are as follows:

- Did MIGA's underwriting or risk management (i.e. core business) due diligence provide a framework through which security and conflict issues could have been identified and addressed?
- To what extent were these issues addressed?
- Are there inherent limitations in MIGA's core business due diligence in relation to security and conflict issues?

3.1.1 Did MIGA's core business due diligence processes provide a framework to address conflict and security issues

As noted in section 2.2.1, conflict and security are core business concerns for MIGA, and the agency's due diligence processes provide a framework to identify and address these issues. The main focus is therefore on the extent to which these issues were addressed and on the limits to which they are routinely addressed as a matter of process.

3.1.2 Extent to which MIGA's due diligence was followed in relation to conflict and security

For the Dikulushi project, MIGA conducted an extensive desk-based analysis of the DRC country risks. MIGA explicitly identified conflict and security issues in the DRC, including:

- The origins and circumstances of the rebel conflict commencing in 1997;
- The spread of the internal conflict to involve several neighboring states;
- Continuing violence within the DRC, especially within the Ituri region;
- The peace deals since the beginning of 2002, the formation of the Transitional Government in June 2003, and the obstacles to lasting peace.

In its analysis of project-level risks, MIGA also considered conflict and security issues. The proximity of the mine to areas of significant continuing conflict was considered, as was the consolidation of the peace process with the support of the international community. During the process of underwriting, MIGA explicitly reviewed issues raised in the U.N. Panel report on the links between conflict and the exploitation of natural resources³¹. In particular, the likelihood of Anvil's activities attracting the attention of rebel groups was considered. Given that the product of Dikulushi was bulk concentrates that were not readily extractable or saleable (as opposed to gemstones), MIGA viewed it unlikely that rebels might attempt to take over and run the Anvil operation. They recognized that smaller and perhaps less organized rebel groups, such as the Mai-Mai, might attempt to extract tribute from the mine but that government forces were stationed at the mine and in nearby Pweto and considered that Mai-Mai groups had little structured support in the region. In addition, MIGA noted that Anvil had in place contingency arrangements for evacuating people and mobile assets.

³¹ UN Report S/2002/1146, the Final Report of the *Panel of Experts on the Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of the Congo*

In its analysis of project risks, MIGA explicitly addressed conflict and security risk factors that might ultimately lead to a claim under its guarantees against War and Civil Disturbance by virtue of loss of assets, physical damage, or business interruption. MIGA assigned these risks a high rating. CAO notes that MIGA's analysis to date has proved correct: Some limited disruption of production has taken place as a result of smaller rebel groups, but no major production losses or damage to project infrastructure has occurred.

3.1.3 Inherent limits to MIGA's core business due diligence on conflict and security issues

As noted in section 2.2.1, MIGA treats these issues as insurable risks to the project. Neither the underwriting nor risk management processes for the Dikulushi project explicitly considered the risks that Anvil's presence might either have an impact on the dynamics of conflict, or that security provision for the Dikulushi project could indirectly lead to adverse impacts on the local community. It is unlikely that the presence of the Anvil mine has had any significant influence on the wider dynamics of conflict in the DRC or Katanga, against the backdrop of the complex, sustained, and often fierce conflicts in-country. The potential for the mine to have had a more localized impact on conflict dynamics is uncertain. Noteworthy in this respect is the March 2004 incident involving a Mai-Mai group that attempted to extract tribute from Anvil at Dikulushi and looted some of Anvil's facilities in Kilwa. The October Kilwa incident is clearly also important in this respect and with regard to the related question of conflict and security provision.

As to whether security provision has indirectly led to impacts on the local community, the answer is to some extent yes. For example, Anvil has reportedly taken action against individuals of the FARDC security detail stationed at the mine in response to incidences of inappropriate behavior (see also section 3.3.2). The links between the presence of the mine, the Kilwa incident and subsequent excesses of the FARDC are less clear-cut. The rebel action was directed at taking control of Kilwa as opposed to the Dikulushi project, so arguably the presence of the project was incidental. However, this aspect is by no means clear.

In summary, the presence of the mine and related security provision by the military have resulted in negative impacts on the local community, and Anvil reportedly raises these issues in its meetings with the military commander at Pweto on a six-weekly basis. It is not possible for CAO to assign causal linkages with any confidence to the potentially more serious links between the presence of the mine and state security forces and the human rights abuses that took place in the wake of the Kilwa rebel takeover last October. In post-conflict situations however, CAO considers it imperative that these matters ought to be addressed as part of MIGA's due diligence. These aspects are revisited in section 3.2.2 on MIGA's ESRPs and in section 3.3.2 of the Voluntary Principles.

3.2 Adherence to MIGA's Environmental and Social Review Procedures (ESRPs)

In the context of this compliance audit, the issues of concern relate exclusively to the social aspects of MIGA's ESRPs, as follows:

- Do the ESRPs provide a framework through which broader social issues (including security, conflict, and human rights) can be identified and addressed?
- To what extent were these broader social issues (including security, conflict, and human rights) addressed?
- What are the limits to the ESRP due-diligence process in relation to the Dikulushi Mine project?

CAO analyzed MIGA's ESRP due diligence using the framework and criteria shown in Annex 4.

3.2.1 Do the ESRPs provide a framework for addressing broader social issues?

As noted in sections 2.2.2 and 2.2.3, MIGA's ESRPs provide for, but do not mandate, addressing social issues that could include security, conflict, and human rights. In addition, from September 2004 MIGA, was committed to requiring clients to follow provisions regarding the use of private and public security forces by extractives companies based on the Voluntary Principles. A draft internal guide was produced in April 2005 for staff working on extractives projects, but no guideline for investment agreements was available at the time that the pre-contract due diligence for the Dikulushi project was carried out³².

3.2.2 Extent to which MIGA's due diligence was followed in relation to ESRPs

MIGA's environmental and social due diligence on the Dikulushi project was carried out in two phases.

Phase 1: MIGA's ESRPs were applied between April 2003 and May 2004, starting with a screening stage when preliminary documents were reviewed and project categorization assigned (the project was designated as Category A). Additional information was requested from the client, a site visit was carried out, and further issues were identified and followed up. This culminated in September 2004 with an Environmental Clearance Memorandum being issued, which set out the conclusions of a MIGA senior environmental specialist that the project was sound and expected to comply with MIGA's applicable safeguard policies and environmental guidelines. The Environmental Clearance Memorandum proposed some environmental conditions that should be included in a contract with the client. The EIA (and an abbreviated Resettlement Action Plan) were publicly disclosed through the World Bank's InfoShop in July 2003.

MIGA's project screening and categorization of Dikulushi were adequate, as was its identification of additional information requirements to Anvil. MIGA reviewed key project documents (including the EIA and Social Baseline Study³³) and requested further information from the client on a number of key social issues and management processes. During the more detailed review phase, a site visit was undertaken in August 2003. Some areas of focus at this stage included Anvil's security arrangements, systems for communication with the local community and local government, concerns being expressed by community members about Anvil, the social and economic changes in Kilwa and Dikulushi following the project's start-up, the social projects being carried out by Anvil, progress in developing agreements with NGOs to implement the sustainable development plan to be funded through the 10 percent of dividend income of profits, and Anvil's commitment to voluntarily make public any payments made to government officials and community leaders. However, CAO considers it inadequate that MIGA's overall evaluation was that the project had a low risk for significant adverse social (and environmental) impacts³⁴, as neither MIGA nor its client had fully identified the potential impacts (e.g. with respect to conflict) and the mitigation measures identified were at times inadequate (e.g. with respect to in-migration).

Phase 2: In May 2004, changes to MIGA's management structure (as described in section 2.2.5) resulted in the project team revisiting environmental and social due diligence on the project. The due diligence already undertaken was systematically reviewed for environmental and all other aspects. An early step taken by the new management team was to engage with NGOs on the project with the aim of finding out what their concerns were. A meeting was held in Washington³⁵ in June 2004 with a number of international and Congolese NGOs/civil society representatives, followed by a series of e-mail exchanges.

³² As of 6 September 2005 this guidance has not been produced.

³³ The Social Baseline Study was undertaken by Professor Kalaba Mutabusha, University of Lubumbashi.

³⁴ Based on the risks that were identified and the mitigation/management measures proposed.

³⁵ Some participants joined by telephone.

In the second phase of environmental and social due diligence, attention focused in detail on the trust funds set up to spend 10 percent of project profits on community development—and in particular on ensuring that there were conditions in MIGA's Contracts of Guarantee to assure that these were implemented by reputable organizations (see also section 3.3.1). During this period, the Voluntary Principles on Security and Human Rights were brought to the attention of the client. The key conclusion of the second phase environmental and social due diligence was that the project would benefit the local community because of the trust funds it establishes.

In summary, MIGA's adherence to its ESRPs was initially adequate, and some important issues were flagged in the latter stages. However, a number of potentially important social issues were not identified, despite the two-phase review process. CAO notes that no social specialist was involved in the Dikulushi due diligence, and that may explain some of the weaknesses noted below.

3.2.3 Areas of weakness in ESRPs due diligence

Social aspects: MIGA's ESRP includes both open-ended and specific social due-diligence requirements. At an early stage, MIGA sought assurances that its specific involuntary resettlement requirements would be met. Although a range of other social issues were correctly identified (see section 3.2.2), CAO concludes that MIGA's due diligence did not recognize that some aspects, such as migration into the mine area and the risk of increased infection rates of sexually transmitted diseases, were not adequately addressed in the plans and actions reported by Anvil. These weaknesses in due diligence may have resulted from MIGA's determining, in September 2003, that the project appeared to have a low risk for significant adverse social impacts and from the absence of input into ESRP due diligence by social specialists.

Public consultation and disclosure: MIGA's ESRP requires project sponsors to consult with, or to have consulted with, locally affected parties and local interest groups. It sets out criteria for what this is expected to include, notes that consultation should be carried out in an appropriate manner, and states the potential for variation to take account of local conditions, e.g. low rates of literacy.

In the case of the Dikulushi project, MIGA did not challenge Anvil's assessment that ongoing consultation and disclosure of plans should rely almost entirely on local chiefs and traditional leaders³⁶. In the absence of information based on direct contact with project-affected people, it is not possible to be assured that these approaches meet MIGA's consultation criteria³⁷. Specifically, there is no independent information to confirm that all members of the community are effectively represented by local chiefs and traditional leaders, especially in the context of extensive in-migration since the project started; that the delegation of authority to traditional leaders is accepted by community members; or that these approaches allow for effective consultation, as opposed to one-way transmission of information. CAO concludes that Anvil's repeated assertion that it had no knowledge about human rights abuses in October 2004 until after their contact with the *Four Corners* team is not consistent with having in place mechanisms for meaningful consultation with the community, i.e. if mechanisms for meaningful consultation existed, the company would have become aware of the alleged abuses during the October 2004 incident, prior to May/June 2005.

³⁶ In e-mail correspondence with the CAO in September 2005, Anvil noted that its community consultation was significantly extended by the Community Needs Assessment, conducted by World Vision in 2004, and that on-going discussions with a Washington-based NGO in relation to the trust funds include consideration of establishing an elected community body.

³⁷ MIGA's ESRP requires consultation and disclosure that is meaningful, timely, relevant, and in a form and language that is accessible to the groups being consulted.

Security, conflict and human rights: Understanding the linkages between projects, security, conflict, and human rights, and especially assessing how these might develop over the lifetime of a project, is an emerging field. There is neither a clear model to follow nor any certainty that assessments of potential impacts, or particular management and mitigation measures, will achieve the desired objectives. The difficulties are compounded in an environment such as the DRC.

Notwithstanding the difficulties, CAO considers that the ESRP due diligence for the Dikulushi project was partially unsatisfactory because some critical issues were not fully identified by MIGA or its client:

- The impacts of the cultural, social, and economic changes brought about as a result of the mine development—particularly the risks of such changes triggering or exacerbating local tensions, a risk indicated in the 2001 Baseline Social Study, or of undermining traditional systems of authority and dispute resolution³⁸.
- The risk that if the mine's presence attracted rebel groups (identified in the project risk assessment), this could result in increased insecurity for the local population—for example, the Mai Mai group that camped near Dikulushi village in March 2004.
- The risk that because there is limited government of the DRC presence in the area and because Anvil Mining operates under a government-awarded concession, any dissatisfaction with, or expectations of, the government could be directed at the mine.

Engagement with NGOs: For MIGA, the Dikulushi Mine project was a test case for project-specific direct engagement with NGOs during the underwriting process, reflecting the intention to make the process of project development more inclusive and transparent. Meetings followed by exchange of e-mails were held from June to September 2004 with several Washington-based NGOs, a European NGO, and two NGOs from the DRC³⁹ to discuss the project before it was presented to MIGA's Board. There has been further contact with broadly the same group of organizations since April 2005.

This engagement has to date yielded few positive results in terms of information-sharing, problem-solving or trust-building. Erroneous assumptions appear to have been made by all parties as to the information that the others held, with important information not being shared—for example, early knowledge of the Kilwa incident on the part of one NGO—resulting in mutual distrust. There were fundamentally different views between MIGA staff and the NGO representatives they engaged with as to whether the key NGO contribution should be to provide evidence on specific issues of concern or to raise issues that MIGA should independently follow up. After September 2004 when communications tailed off, MIGA staff understood this to be because it was accepted that it had addressed NGO concerns as far as it was possible. In contrast, some of the NGOs felt that the decision to take the project to the Board before their concerns were fully addressed reflected MIGA's not really being interested in their contribution.

³⁸ The needs assessment carried out in 2004 reported that the population of Dikulushi had expanded from some 20 households before the mine started to around 500 households in a 'large and expanding agglomeration'. *World Vision, Dikulushi Social Development Programme: Needs Assessment and Indicative Action Plan*, p.34

³⁹ Environmental Defense Fund; Bank Information Center; Friends of the Earth; Rights Accountability in Development (RAID) UK; a World Vision representative in Kinshasa and the Centre National d'Appui au Développement et à la Participation Populaire (CENADEP).

Systemic issues: CAO's assessment is that these weaknesses in environmental and social due diligence on the Dikulushi project reflect four specific points raised by the CAO in its 2002 report on MIGA's ESRPs⁴⁰:

- The importance of having projects screened by a social specialist;
- The need to assess more consistently the need for and adequacy of consultation;
- The necessity of linking country risks, potential social impacts at the project level, and insured risks (particularly war and civil disturbance); and
- The reliance in MIGA's business model on information provided by clients (see section 2.2.4).

3.3 Commitments under the World Bank's EIR Management Response

As noted in section 2.2.3, of particular relevance to the Dikulushi project are some of the recommendations and commitments concerning security and human rights and enhancing the benefits of extractives projects for the poor.

The increased focus on enhancing the development impact of extractives projects is relevant both to the EIR Management Response and also to the legal basis under which the Dikulushi project was developed. Both these aspects are addressed in an integrated manner below.

3.3.1 Was MIGA's due diligence responsive to development impact aspects?

As part of a wider set of recommendations relating to pro-poor governance, the EIR called for revenue sharing with local communities. The World Bank Group's Management Response recognized the rights of individual governments to establish laws and policy concerning specific arrangements. In the case of the DRC, some provisions for sharing revenues with provincial governments and local communities have been provided for under the New Mining Code promulgated in July 2002 and new mining regulations promulgated in March 2003 (Decree 038/2003, March 2003).

MIGA's due diligence explored the issue that Anvil is one of just three companies in the DRC assigned a "grandfather" clause to recognize existing investments by companies that had signed their conventions in the post-Mobutu era. Although the Mining Convention granted to Anvil by the Government of DRC provided for 10 percent of the profits of any project developed under the convention to benefit the local community, there was a robust debate within MIGA as to the merits of backing the Dikulushi project, particularly in light of the World Bank's support for developing the New Mining Code and the very limited application of the "grandfather" clause. MIGA obtained explicit written assurances from the World Bank's Country Manager in September 2003 (and reiterated in April 2004) that the World Bank was supportive of the project. In addition, MIGA also undertook a detailed comparative analysis of the economic rates of return for the project under the two scenarios of the Mining Convention versus the New Mining Code. Although the overall returns to the investor are higher and returns to central government are lower under the Mining Convention, the returns to local communities were estimated as three times higher under the Mining Convention compared to the New Mining Code. On this basis, MIGA determined that the trade-offs were reasonable—particularly in light of Anvil's commitment to have the benefits to the local community transparently administered by an independent NGO.

⁴⁰ **Insuring responsible investments?** *A review of the application of MIGA's Environmental and Social Review Procedures*, CAO, December 2002

In the early stages of project development in July 2000, and consistent with the requirements of its Mining Convention, Anvil established two trusts⁴¹ to ensure that the project benefited local communities. The trusts provide for 10 percent of dividend income of profits from the Dikulushi project, or any other project developed under Anvil's Mining Convention, to be spent for the benefit of the *"communities in the vicinity of or most affected by the Dikulushi Project"*⁴². In broad terms, the trust allocations are to be spent *"in a manner which, in the opinion of the trustee, assists the overall social and economic benefit and advancement of those communities."* More specifically, this may include expenditure on education; facilities or infrastructure including sanitation, roads, water and community buildings; health facilities; employment or vocational training programs; and assistance to humanitarian or charitable organizations for the benefit of relevant communities. MIGA has included as conditions of contract that Anvil enter into an agreement with a reputable NGO or other acceptable party to implement the local community development program, that there be acceptable implementation of a community development program for the duration of the contract, and that no changes be made to the trust deeds to reduce the revenues allocated to community development.

3.3.2 Weaknesses in MIGA's due diligence on development impact aspects

CAO recognizes that MIGA made an informed judgment regarding the acceptability of the development benefits of the Dikulushi project, based on consideration of a number of trade-offs. However, CAO has a number of outstanding concerns regarding the eventual benefits to communities:

- Despite the condition of contract that no changes be made to the trust deeds to reduce the revenues allocated to community development, the extent to which dividend income is paid out of profits and the choice of beneficiary communities is at the discretion of the trustees. MIGA's view was that Anvil's stock exchange listings were an incentive for the company to ensure that profits and dividends were high out of a concern for its share price and that trustees would be guided by the independent NGO on the choice of beneficiaries;
- MIGA, in providing support for the project, was encouraged by the fact that a respected international NGO would be involved in the project and that Anvil had deferred the responsibility for trust revenue management and transparency to that NGO. Yet the NGO would only be responsible for the management of revenues provided by the trusts and would have no responsibility for the trust structure. Therefore, transparency would at best be limited to the flow of funds provided to the NGO for social programs⁴³; and
- While World Vision has undertaken a fairly comprehensive participatory diagnosis of community development needs, the absence of a formal agreement between Anvil and an NGO partner is a risk to the successful delivery of the community development program. CAO acknowledges that Anvil is working toward agreement with an NGO, following the decision not to proceed with World Vision. In the climate of mistrust created by the allegations against Anvil, reaching such an agreement has become more challenging.

In summary, it is unclear of the extent to which an agreement between Anvil and an NGO partner would ensure the transparency of revenue allocations that MIGA had anticipated and whether the anticipated development benefits will be realized.

⁴¹ The trust structure was set up in Australia because the DRC legal system does not provide for a trust mechanism to be established in the DRC.

⁴² Trust Deeds for Anvil Trusts No.s 1 and 2, July 21, 2000.

⁴³ Provisions of Trust Deeds for Anvil Trusts No.s 1 and 2, July 21, 2000; personal communication with Anvil CEO. Anvil has indicated that the trusts are audited annually by Price WaterhouseCoopers, an international accounting firm, in conjunction with the audit of Anvil Mining Limited and its subsidiaries.

3.3.3 Was MIGA's due diligence responsive to Security and Human Rights aspects?

The Management Response to the EIR committed MIGA to require clients to follow provisions regarding the use of private and public security forces by extractives companies based on the Voluntary Principles on Security and Human Rights. However, it did not envisage a guideline for new investors being available until the third quarter of FY05 (January–March 2005). In anticipation of the emerging EIR commitments and as part of its environmental and social due diligence, MIGA examined security issues to some extent and took the responsible approach of requiring Anvil to provide a representation to the effect that it would apply the Voluntary Principles.

In August 2003, MIGA's due diligence noted that Anvil employed unarmed security guards directed at controlling access and preventing theft⁴⁴. MIGA also noted that a small squad of soldiers was stationed at the mine, as part of the requirements of the government of DRC to guard against theft of explosives. Anvil provided food, tents, and pay to the soldiers—as government support was unreliable—to ensure that the soldiers did not act against the mine, its personnel, or the community. MIGA acknowledged Anvil's efforts to manage the risk of the military becoming a security problem but neither Anvil nor MIGA sought to investigate the human rights record of the military and police detachments deployed at the site and in the wider area, as required by the provisions of the Voluntary Principles.

In mid-September 2004, MIGA took the view that the EIR Management Response to implement the Voluntary Principles would take immediate effect, in the absence of any qualification on the timing of implementation. MIGA asked Anvil to provide a representation as to whether Anvil considered itself to be compliant with the Voluntary Principles. In its response⁴⁵, Anvil confirmed that there were no statements in the Voluntary Principles *“that are at odds with Anvil's modus operandi.”* It indicated that it would be pleased to be listed as a supporter of the principles, subject to the consent of the Anvil Board. Anvil also indicated that it was unfamiliar with certain documents referred to in the Voluntary Principles but would not expect the principles embodied in these referenced documents to be at odds with Anvil's approach. MIGA accepted the representation but did not include any specific provisions concerning the Voluntary Principles within the Conditions of Contract. At the time the contracts were issued in April 2005, MIGA did not have draft covenants in place to explicitly address the Voluntary Principles⁴⁶.

3.3.4 Weaknesses in MIGA's due diligence on Security and Human Rights aspects

MIGA's explicit recognition of the relevance of security issues and attempt to address these issues as part of its due diligence was positive, especially as a site visit of its senior environmental specialist pre-dated the December 2003 report of the EIR. Insofar as it attempted to anticipate the treatment of Security and Human Rights, MIGA's approach was progressive. Similarly, MIGA's requirement that its client provide representations regarding conformance to the Voluntary Principles was also positive. Where MIGA's due diligence was lacking however, in the opinion of the CAO, was that MIGA neither had the requisite skills in-house, nor contracted the requisite skills, to either:

- Fully understand the implications for its client of implementing the Voluntary Principles; or
- Assess whether its client had the requisite skills in place to understand and operationalize the Voluntary Principles.

Neither MIGA nor Anvil recognized the critical distinction between the Voluntary Principles and conventional security. The latter is concerned with implementing systems, procedures, and

⁴⁴ Office Report of Senior Environmental Specialist, August 29, 2003.

⁴⁵ E-mail from Anvil CEO dated September 17, 2004.

⁴⁶ MIGA was not unique in this respect as no other part of the World Bank Group had prepared draft covenants.

arrangements for securing the safety and well-being of personnel and protecting against loss of assets against perceived threats. In contrast, the Voluntary Principles recognize that conventional security, involving either public or private security personnel, has the potential to present risks to the safety and well-being of local communities. Its focus is on putting in place systems, procedures, or arrangements to guard against these risks as well as to protect extractive industry operations. This involves a conceptual shift in a company's traditional view of security.

From detailed reviews of the files and lengthy conversations with Anvil, it is clear to the CAO that Anvil applied some aspects of the Voluntary Principles formally and others informally. It is also clear that Anvil has an understanding of many of the risk factors and mitigants of relevance to the Voluntary Principles. Some remaining shortcomings include the absence of a documented and updated risk assessment in line with the specific provisions of the Voluntary Principles, including a robust analysis of the risks relating to their interactions with public security forces; the absence of a clear documented policy on ethical conduct and human rights as a basis for reinforcing the company's regular engagement with public security forces and promotion of principles relating to deployment and conduct of public security; and arrangements for more structured follow-up in response to any alleged human rights abuses. CAO understands that in recent months, Anvil has engaged with a number of organizations to obtain the specialist advice required to more systematically implement the Voluntary Principles.

The CAO does not claim that if Anvil had fully implemented the Voluntary Principles, the events at Kilwa would have taken a different course. This remains an area of uncertainty, and in volatile operating environments there is a residual risk that abuses may happen even where the Voluntary Principles have been followed. Had the Voluntary Principles been applied in a systematic manner, however, they would have provided an essential bridge across the current disconnect between the treatment of conflict as an insurable risk, and the potential for a project to influence the dynamics of conflict in a way that might cause harm to local communities. For MIGA's due diligence to have been adequate, it would have needed to systematically review its clients' work on implementing the Voluntary Principles and satisfy itself of the adequacy.

MIGA is firmly of the view that client warranties and representations transfer the burden of responsibility of compliance for such aspects to the client, irrespective of whether MIGA was in a position to advise its client on the full implications of its representations (as in the case of Anvil and the Voluntary Principles). As noted in section 2.2.4, in the absence of a systematic evaluation by MIGA of its client's capacity to address issues such as the Voluntary Principles, it is difficult to have any confidence that clients will undertake all necessary actions to remain in compliance, however well intentioned, and thus avoid adverse impacts. In addition, in the event of something going wrong, although MIGA may be protected from liability, the reputational burden inevitably falls disproportionately on MIGA and the World Bank Group; and people or the environment are placed at risk or harmed. These risks were clearly outlined in the CAO's 2002 review of MIGA's ESRPs⁴⁷, which recommended that MIGA adopted a more systematic approach to determining client's capacity to address identified risks.

In summary, CAO continues to consider it unacceptable that this disconnect exists—between MIGA's expecting clients to warrant or represent that they will address important matters of policy or practice, without assessing whether clients have the capacity to either understand or implement requirements. Simply stated, in addition to relying on warranties and representations, MIGA needs to proactively assure itself that insured clients have in place the capacity to comply with all applicable social and environmental requirements.

⁴⁷ **Insuring responsible investments?** *A review of the application of MIGA's Environmental and Social Review Procedures*, CAO, December 2002.

4. Findings and recommendations

4.1 Findings

- MIGA adequately followed its underwriting and risk management due diligence. However, its core business processes provide only a partial framework for addressing conflict and security issues, insofar as they represent insurable risks to a project. These same processes do not address whether the project may either influence the dynamics of conflict or whether security provision for a project such as Dikulushi could indirectly lead to adverse impacts on the local community.
- MIGA's initial adherence to its ESRPs was adequate, but its follow-through on social aspects was weak in some key areas. CAO notes that MIGA had no in-house social expertise when the project was initially dealt with⁴⁸, but these requisite skills could have been contracted by MIGA.
- For the Dikulushi project, MIGA, for the first time, engaged with NGOs at the project level as part of its due diligence and included explicit provisions within the Contract of Guarantees to reinforce the prospects of the project's positive development outcomes. CAO views both as positive innovations.
- CAO recognizes the complexities in addressing the linkages among projects, security, conflict, and human rights. However, for the Dikulushi project, CAO considers that the ESRPs should have extended the reach of MIGA's core business processes by flagging issues such as the risk of the mine's presence exacerbating local tensions or attracting rebel groups and that these could result in increased insecurity for local people. These weaknesses may stem from the absence of specialist social expertise input into the Dikulushi project by MIGA and the overall low risk MIGA had assigned to social impacts.
- Beyond conflict and security aspects, MIGA's social due diligence for Dikulushi flagged a number of other important issues, but follow-through on some of these issues was weak. In particular, the treatment of impacts resulting from in-migration, the risks of increases in the incidence of sexually transmitted diseases, and the adequacy of consultation were not systematically addressed. As noted above, these weaknesses may stem from the absence of specialist social expertise input by MIGA and the overall low risk assigned to social impacts.
- MIGA made an informed judgment regarding the acceptability of the developmental benefits of the Dikulushi project, based on consideration of a number of trade-offs. However, CAO has a number of concerns regarding the amounts of monies that will accrue to the trusts, the limits to the hoped-for transparency to be achieved by involving a respected NGO in the management of trust funds, and the risks to Anvil's reaching agreement with an effective NGO partner in the current climate of mistrust.
- Regarding the Voluntary Principles on Security and Human Rights, MIGA did not fully understand the implications for its client of implementing the principles nor assess whether its client had the capacity to do so. Neither MIGA nor Anvil recognized the critical distinction between conventional security, which deals with securing the safety and well-being of personnel and assets, and the Voluntary Principles, which recognize that conventional security provision can, in and of itself, present risks to the well-being of communities

⁴⁸ MIGA's first social specialist was recruited in early 2004.

- Weaknesses in the environmental and social due diligence on the Dikulushi project, and in the treatment of conflict and security issues specifically, reflect a number of concerns that were the subject of recommendations by CAO in a 2002 review of MIGA's ESRPs. Many of these recommendations had not been fully addressed in the due diligence for the Dikulushi project, including:
 - The importance of having projects screened by a social specialist;
 - The need to systematically assess a client's capacity for managing social and environmental issues;
 - The need to more systematically evaluate and report on social and environmental risks (beyond those explicitly addressed in MIGA's policies);
 - The need to more thoroughly assess the adequacy of consultation;
 - The necessity of evaluating links between country risk analyses and potential social and environmental impacts at the project level; and
 - Recognizing the risks of over-reliance on clients' warranties and representations.

4.2 Recommendations

It is not appropriate for CAO to opine on whether MIGA should continue to provide political risk insurance to the Dikulushi Mine or on whether there are grounds for canceling the contract. However CAO considers it essential that steps be taken to try and limit the risk of future incidents where the military or armed groups commit human rights abuses in the Dikulushi/Kilwa area and to eliminate as far as possible the risk of Anvil's equipment being used by any armed groups at risk of committing human rights abuses. Accordingly CAO makes the following recommendations:

- MIGA should support Anvil in its efforts to fully implement the Voluntary Principles and address some of the key areas of weakness highlighted in this report. This will require the engagement by MIGA of specialist expertise with experience of the application of the Voluntary Principles in challenging operating environments, which Anvil is already seeking to do by engaging with a number of organizations.
- MIGA should retrospectively address the shortcomings with respect to its social due diligence on the Dikulushi project. In particular, CAO recommends that a truly independent field assessment of key areas of uncertainty be commissioned to include a robust participatory analysis of stakeholder perspectives relating to the local dynamics of conflict and related factors and an assessment of the adequacy of Anvil's consultative processes with communities and government. This work would also be supportive of efforts to implement the Voluntary Principles and should be independently funded.
- MIGA should proactively engage with Anvil to ensure that the anticipated development benefits of the trust structures and enhanced transparency of revenue allocations are realized and that shortcomings identified by the CAO are addressed.

More generally, and of relevance to Dikulushi and other MIGA projects:

- CAO recommends that in situations where conflict, security, and human rights are of concern, MIGA require clients to systematically apply the Voluntary Principles. This is especially relevant in conflict or post-conflict situations. CAO views the application of the Voluntary Principles as having the potential to bridge the current disconnect between MIGA's treatment of conflict as an insurable risk and the potential for security provision to cause harm to local communities.

- In light of MIGA's role as political risk insurer and strong presence in conflict-prone countries, CAO recommends that MIGA play an active role in implementing the Voluntary Principles within the World Bank Group. This requires MIGA to develop expertise in the application of the Voluntary Principles, produce clear guidance for clients on the application of the principles (in collaboration with IFC), systematically assess clients' capacity to implement the Voluntary Principles for high-risk projects, and provide support to clients as required.
- MIGA should expand its use of specific social and environmental contractual provisions to ensure, where relevant, adherence to commitments such as the Voluntary Principles.
- At the screening stage, MIGA should ensure that all projects are reviewed by a social specialist and, in the case of extractive industry projects, by a social specialist with experience of this sector. This should identify the need for a social specialist contribution throughout the processes of project review and monitoring.
- CAO concludes that the logic for substantive engagement between MIGA and NGOs at the underwriting (and post-contract stage) is strong. There were, and could continue to be in the case of Dikulushi, significant potential benefits to be gained from such engagement. CAO suggest that this needs to be structured in a way that enables all parties to proceed from a better understanding of the others' perspectives, as well as operational and conceptual frameworks and priorities.
- MIGA should revisit the recommendations of the 2002 CAO review of its ESRPs and move to more systematically implement the recommendations. The continuing relevance of many of these recommendations has been demonstrated as a result of this audit, as have shortcomings in their implementation to date.

Annex 1: Request for Audit



The World Bank

July 27, 2005

PAUL WOLFOWITZ
President

MEMORANDUM FOR: Meg Taylor, CCAVP

SUBJECT: The Dikulushi Project

Meg,

Regarding your note of July 19, 2005, I would like you to begin an audit of MIGA's due diligence procedures surrounding the political risk guarantee to Anvil Mining NL of Australia for the Dikulushi cooper-silver project.

I look forward to meeting with you and being briefed on the findings of your review of this case, and in any event before the Annual Meetings.

Annex 2: Letter from Raid to President Paul Wolfowitz

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

Annex 3: Organizations and Sources Consulted

Organizations

Anvil Mining (www.anvil.com.au)
Bank Information Center (www.bicusa.org)
Environmental Defense Fund (www.edf.org)
Friends of the Earth US (www.foe.org)
IFC (www.ifc.org)
MIGA (www.miga.org)
MONUC (www.monuc.org)
Rights Accountability in Development (RAID), UK (www.raid.oxford@ntlworld.com)

Sources

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Insuring responsible investments? *A review of the application of MIGA's Environmental and Social Review Procedures*, CAO, December 2002. www.cao-ombudsman.org

MIGA files.

Report on Human Rights Violations Committed in Kilwa in the Month of October 2005, ASADHO Katanga, January 2005.

MONUC, Rapport sur les conclusions de l'Enquête Spéciale sur les allégations d'exécutions sommaires et autres violations de droits de l'homme commises par les FARDC à Kilwa (Province de Katanga) le 15 octobre 2004., August 2005

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U.N. Security Council S/2004/1034, Sixteenth Report of the Secretary-General on the United Nations Organization Mission in the DRC, 31 December 2004. www.un.org

U.S. Department of State, Country Reports on Human Rights Practices 2004, February 2005. www.state.gov

Voluntary Principles on Security and Human Rights. www.voluntaryprinciples.org

Annex 4. Analytical framework and criteria for assessing Dikulushi Project Compliance with E&S Review Procedures

Project Description: Development of a copper and silver mine working deposits at Dikulushi, Katanga Province DRC. The mine has been in operation since 2003; the project is to cover \$5m of equity investment and a \$5m loan to meet the costs of costs of second-stage development of the Dikulushi Mine by Anvil Mining, including works at the port facilities in Kilwa (DRC) and Nchelenge (Zambia).		Applicant status: Equity holder and operator; lender		
Issues and aspects to be addressed		<i>Details as appropriate</i>	<i>Rating</i> ⁴⁹	<i>Criteria used for rating</i>
Project screening and categorization	Which documents were available at the preliminary environmental screening stage (Definitive App)?	Draft EIA. Ref. made in initial email of MIGA environmental specialist to “documentation which includes” the EIA but no other documents seen by CAO.	3	<ul style="list-style-type: none"> ▪ Client company made all relevant available documentation available
	Was the categorization of the project clear and unambiguous (and what category was assigned)?	Environmental specialist was unambiguous that category A should apply. This was challenged by underwriter but confirmed by environmental specialist	Y	<ul style="list-style-type: none"> ▪ Was the rationale for project categorization clearly stated? ▪ Given the nature and location of the project, was the categorization reasonable?
	Were all exclusions rigorously considered and was there a need to apply a test of reasonableness?	N/A	N/A	N/A
	What additional information requirements were requested in the Early Management Screening (EMS) memorandum?	N/A, as the Environmental Assessment was available prior to categorization and enabled an informed decision to be made regarding categorization	N/a	<ul style="list-style-type: none"> ▪ Was the information available comprehensive? ▪ If not, did the EMS memo flag up additional information requirements in broad terms for the conduct of MIGA’s due diligence?
Joint Projects	Did the project involve the participation of other partners in the World Bank Group or any other multilateral agency?	No	N	N/A
	If so, did MIGA defer to the procedures followed by the other agency or was there a difference in application (e.g. categorization)?	N/A	N/A	N/A
	What are the implications (if any) of the observed differences?	N/A	N/A	N/A

⁴⁹ Note: Ratings 1-3 are as follows: 1 – Unsatisfactory; 2 – Less than fully satisfactory; 3 - Satisfactory

<i>Environmental and social information review</i>	On receipt of the EA and other documents, were any deficiencies identified and alerted to the underwriter?	<p>Yes.</p> <ul style="list-style-type: none"> • Revised EIA (request for a revised EIA implied in e mail traffic but the request itself not seen in the files) • More detail on resettlement issues/compensation. • More information about consultant team charged with filling data gaps–CVs • Timing for AMD testing. • Copies environmental scoping study and Environmental project brief for Nchelenge port facility (Zambia) • Timing for assessment of AMD risk. • Details of proposed PCD. • Schedule for development of Social Management Plan (SMP) • Copy of original Sustainable Development Plan (SDP) • Detailed information on the role of the affected community in developing these plans and relationship between them. • Written commitment that Anvil accepts and will carry out the EMP and associated plans as developed by the consultants. 	3	<ul style="list-style-type: none"> ▪ Were deficiencies identified? ▪ Were these broadly responsive to MIGA's Safeguard Policy commitments and ESRPs? ▪ Were these clearly communicated to the underwriter?
	Did the investor provide a satisfactory response to MIGA's additional information requirements (where applicable)?	<p>No, with a few exceptions, i.e. data on compensation for loss of crops. RAP was not based on consultation with project-affected people other than via local administrators and police. All other outstanding points reiterated by MIGA as still needed and to be followed up on during MIGA site visit if not provided beforehand.</p>	1	<ul style="list-style-type: none"> ▪ Did the investor respond to any additional information requests? ▪ Were these responses sufficient to address queries raised? ▪ Did MIGA follow-through to ensure that satisfactory responses were obtained?
	Were any variances from policies or guidelines proposed and alerted to the board?	No	N	N/A
	Was a site visit undertaken and on what basis was the need for a visit determined?	<p>Yes. To follow up on outstanding issues as listed above.</p>	SAT	<ul style="list-style-type: none"> ▪ Was a site visit undertaken? ▪ If not, was the decision not to visit the project site justifiable?

	<p>Which environmental issues were identified as important and who undertook the review (MIGA, IFC, external)?</p>	<p>MIGA Senior Environment Specialist. Issues identified as outstanding prior to site visit:</p> <ul style="list-style-type: none"> • AMD risk. • Loss of riparian habitat from diversion of 700m. stretch of Dikulushi River. • Detailed Decommissioning and Closure Plan. • Emergency Response Plan. <p>Following site visit, recommendations were made for 5 environmental contract conditions to be considered plus confirmation before the beginning of the rainy season that surface water management systems were in place.</p>	<p>3</p>	<ul style="list-style-type: none"> ▪ Were important environmental issues identified? ▪ Was appropriate expertise applied? ▪ Given the nature and location of the project, did the identified issues seem reasonable? ▪ Were steps taken to ensure that significant potential issues followed-through and addressed?
	<p>Which social issues were identified as important and who undertook the review (MIGA, IFC, external)?</p>	<p>MIGA Senior Environment specialist undertook the review. Areas noted as outstanding prior to site visit included:</p> <ul style="list-style-type: none"> • Social Management Plan. <p>Issues noted as potential adverse impacts:</p> <ul style="list-style-type: none"> • In-migration. • Sexually Transmitted Diseases. <p>Noted as key social opportunity:</p> <ul style="list-style-type: none"> • Social/community benefits <p>Site visit BTO recognizes that there had been significant economic and population growth at Dikulushi and economic growth to a lesser extent at Kilwa, i.e. evidence that significant social impacts had already occurred. No recommendations were made following site visit for any contract conditions related to social issues.</p>	<p>1 - 2</p>	<ul style="list-style-type: none"> ▪ Were important social issues identified? ▪ Was appropriate expertise applied? ▪ Given the nature and location of the project, did the identified issues seem reasonable? ▪ Were steps taken to ensure that significant potential issues followed-through and addressed?

<p>Were there any obvious omissions in the issues considered as important (environmental or social)?</p>	<p>Social – the following issues though in some cases acknowledged were not recognized as important:</p> <ul style="list-style-type: none"> • Impacts of social, cultural and economic changes brought about because of the mine development. • Security and Human Rights • Risk that the mine's presence attracting rebel groups (identified in war and civil conflict risk assessment) could result in increased insecurity for the local population too. • Risk that because there is virtually no government presence at Dikulushi as noted in project risk assessment. Anvil would end up being seen as taking the place of government and that any dissatisfaction at the government might end up being targeted at Anvil. <p>Other key gaps:</p> <ul style="list-style-type: none"> • Pressing for appropriate action in the Social Management Plan to address some of the issues identified, i.e. in-migration, STDs • Testing commitment and resourcing for the Social Management Plan commitments in the EIA i.e. worker and community initiatives on malaria and HIV/AIDS 	<p>1</p>	<ul style="list-style-type: none"> ▪ Were environmental or social issues likely to be important not identified? ▪ Given the nature and location of the project, was the failure to address these issues more fully likely to be significant? ▪ Were steps taken to ensure that significant potential issues followed-through and addressed?
<p>Where external assistance was sought, was the advice accepted (if not why not)?</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>
<p>Were any social issues identified that were beyond the responsibility of the client and how were these dealt with?</p>	<p>None identified. Typically extractive industry projects would recognize security and human rights, in-migration, local economic impacts and HIV/AIDS as issues where the client alone cannot provide solutions and collaboration with local government and others is needed.</p>	<p>1 - 2</p>	<ul style="list-style-type: none"> ▪ Were any such issues identified? ▪ Given the nature and location of the project, was the failure to identify such issues likely to be significant? ▪ Were steps taken engage with third parties with responsibility for dealing with these issues?
<p>What influence (if any) did the applicant's role (e.g. minority investor) have on the treatment of social issues?</p>	<p>N/A</p>	<p>N/a</p>	
<p>For expansion or privatization projects, was an audit conducted and measures identified to ensure compliance with MIGA policies and guidelines?</p>	<p>N/A</p>	<p>N/A</p>	

	Has MIGA taken the opportunity to move beyond "do no harm" to encouraging the applicant to "do good"?	<p>Yes</p> <p>MIGA very supportive of arrangement under Anvil's Mining Concession Agreement that the local community is a 10% shareholder in the project, which means that 10% of project profits is to be spent on local community development.</p> <p>MIGA took the initiative of encouraging Anvil to voluntarily make public any payments made to government officials and traditional leaders.</p>	3	
<i>Clearance and reporting</i>	Did the clearance memorandum detail outstanding issues and actions to address these issues and stipulate project monitoring requirements?	<p>5 environmental conditions suggested.</p> <p>No social conditions suggested although note made that the SD plan not yet finalized. No social risks identified.</p>	E 3 S 1	<ul style="list-style-type: none"> ▪ Did the clearance memorandum revisit areas of uncertainty identified during MIGA's due diligence process? ▪ Did the clearance memorandum detail outstanding issues? ▪ Were the actions required to address these issues adequate? ▪ Were monitoring requirements (time-bound or recurring) stipulated?
	Does the President's report contain sufficient information on social and environmental risks?	No social risks identified. Report addresses only social projects done and projects/benefits to be realized in the future. More information provided on environmental impacts and how these are being/to be managed.	E 2 S 1	<ul style="list-style-type: none"> ▪ Did the President's report adequately outline environmental and social risks? ▪ Were the actions required to address these issues outlined? ▪ Were monitoring requirements (time-bound or recurring) stipulated?
<i>Guarantee issue and conditions</i>	Was a guarantee issued which was conditional on the sponsor completing necessary environmental activities within a specified time period (give details)?	<p>(1) Finalization within six months of contract signature of an agreement with a reputable party acceptable to MIGA to implement the community development program around the Dikulushi area.</p> <p>(2) Completion within 12 months of contract signature of a study on AMD potential.</p>	Y	N/A

	<p>Were nonstandard clauses dealing with either environmental or social issues included in the guarantee contracts to reflect project specific concerns?</p>	<p>Warranty to:</p> <ul style="list-style-type: none"> • implement the EMP as described in the EIA and as amended from time to time; • conduct an annual monitoring program • implementation the community development program a way acceptable to MIGA; • produce an amended EIA to address any additional developments to feed the Dikulushi ore processing facility; • not allow any amendments of trust deeds that would reduce revenues allocated to community development 	3	<ul style="list-style-type: none"> ▪ Were identified actions in respect of environmental or social issues (even if these were incomplete in the view of CAO) dealt with in guarantee?
	<p>Do the contracts clearly specify the environmental and social obligations of the applicant?</p>	<p>The requirements related to implementation of plans set out in the EIA are ambiguous. The representation and warranty is to “implement the Environmental Management Plan (EMP) as described in the Environmental Impact Assessment.” We understand from MIGA that this includes the Environmental and Social Management Plan shown as Appendix VIII of the EIA including the components labeled ‘Social Management Plan.</p>	2	<ul style="list-style-type: none"> ▪ Are the requirements clearly laid out? ▪ Are the environmental and social obligations unambiguous?

Consultation and disclosure	<p>Was the level of consultation and disclosure appropriate in the case of category A projects (meaningful and timely, appropriate language, ongoing commitment, etc.)?</p>	<p>No:</p> <p>We are told that consultation is extensive and frequent with local chiefs and the regional chief but have no data on this; nor is there any evidence that meaningful consultation took place with the community. We also know (mid-2004) that there has been significant in-migration to Dikulushi and have no information on whether in-migrants are in any way represented by the local chiefs. There is no reference to the need for, or conduct of, any public consultation in Kilwa although it is recognized that the project has impacts on the town.</p> <p>We are told that the findings of the EIA have been extensively discussed at the local level in a culturally appropriate manner but have no evidence of this.</p> <p>There is no evidence in the EIA of any public consultation during the process of the study or of information collection from community members other than those in a position of authority.</p> <p>From June 2005 MIGA made efforts to consult with Washington D.C. and Congolese NGOs including meetings and extensive exchange of letters and e-mails.</p>	1	<p>Did MIGA consider:</p> <ul style="list-style-type: none"> ▪ Was meaningful consultation undertaken, in a manner that clearly conveyed the details of project (including positive and negative aspects) to local stakeholders and affected communities? ▪ Are there any records of consultation, actions arising, and the influence that consultations has had on the project? ▪ Was the consultation undertaken in a timely manner? ▪ Was the language of and mechanisms for consultation appropriate and responsive to the needs of stakeholders and affected communities? ▪ Was consultation a one-off exercise, or is there an ongoing commitment to consultation?
	<p>Was the level of disclosure adequate and the timing in accordance with the requirements?</p>	<p>The EIA and documents on resettlement and compensation were released in the Info Shop.</p> <p>It is acknowledged that there has been very little public information on the project available in Kinshasa.</p> <p>In September 2003 the first NGO enquiries on the project were received requesting a copy of the full EIA in French. This requested of Anvil but no information on file about follow-up.</p>	2	<ul style="list-style-type: none"> ▪ Were MIGA's basic timing commitments for disclosure met? ▪ Did local disclosure take place and was it adequate?

	For category B projects, was any consultation or disclosure undertaken or would it have been important to do so?	N/A	N/A	N/A
Monitoring and compliance	Where a guarantee has been issued that is conditional on implementation of environmental or social mitigation, has this been monitored?	Planned—first monitoring visit by MIGA scheduled for Fall 2005. To date no decision reached on the team for the monitoring visit—essential that someone with expertise in VPs, public consultation and community development be involved.	N/A	
	For category A projects, are the requirements of the Environmental Action Plan adequately monitored?	As above.	N/A	
	Have warranties been requested from the guarantee holder with respect to project compliance (in exceptional cases)?	No.	N/A	
	Have any site visits been undertaken in support of monitoring and how frequently?	No.	N	
	Are overall arrangements for monitoring satisfactory?	Need input from experienced social/Voluntary Principles specialists	2	<ul style="list-style-type: none"> ▪ Are arrangements of monitoring responsive to the key issues identified?

Environmental & social capacity	Has MIGA determined whether the applicant has the requisite skills to fully comply with MIGA's policies and guidelines?	<p>In part.</p> <p>MIGA did identify that the client had a local person whose role is to "circulate around the villages and talk to local chiefs to find out what concerns had been arising." MIGA also identified that Anvil was in discussion with a credible NGO to implement the community development program. However, there was no systematic assessment of the client's capacity in some key respects. MIGA did not question if the local person was a reliable and effective conduit of two-way information nor if senior Anvil managers had the skills to fully comply with MIGA's policies and guidelines. That there might be skills gaps here was indicated in the Anvil response to the Voluntary Principles. MIGA did recognize the necessity of a competent organization being hired to manage the community relations programs and made this a condition of contract.</p>	1 - 2	<ul style="list-style-type: none"> ▪ Was any assessment of applicant capacity undertaken by MIGA? ▪ Was it responsive to key areas of concern to MIGA? ▪ Did it look beyond responsibilities having been assigned and consider the requisite skills to address key environmental and social issues to be managed?
	Has the applicant demonstrated that the operator of the project to which the guarantee pertains has adequate capacity to fully comply with the provisions of MIGA's policies and guidelines?	N/A		