

# RAID

*Rights & Accountability in Development*

11 April 2006

VIA US MAIL and FACSIMILE: 202-522-3031

Paul Wolfowitz, President  
World Bank Group  
1818 H Street NW  
Washington, DC 20433

Dear President Wolfowitz:

We are writing to follow-up on the Compliance Advisor Ombudsman's (CAO) audit concerning the Multilateral Investment Guarantee Agency's (MIGA) due diligence for Anvil Mining's Dikulushi project in the Democratic Republic of the Congo (DRC). We believe the CAO did a commendable analysis and has offered some valuable insights and recommendations for the Dikulushi project and MIGA's operations overall. MIGA's response to the CAO's findings will be measured by both the strength and quality of implementation of the CAO's recommendations and to what extent the audit instructs the World Bank Group's wider engagement in the DRC.

However, we have concerns about MIGA's ability to implement the CAO's recommendations in the absence of diligent oversight by your office. In September 2004, soon after Vice President Omura took the helm of MIGA, civil society groups called for urgent and substantial reforms in the way MIGA does business (Appendix A). This letter raised a number of concerns that are echoed in the CAO's audit of Dikulushi, including MIGA's inadequate implementation of social and environmental safeguard policies; inadequate screening and assessment of project impacts; and serious shortcomings in supervision. Furthermore, as noted in the audit, MIGA has yet to act on several recommendations made by the CAO in its 2002 review of MIGA's Environmental and Social Review Procedures (ESRPs).<sup>1</sup>

We would like to highlight a number of the CAO's key findings that we believe warrant further attention and clarification. In addition, we have proposed specific recommendations for the Dikulushi project to ensure that MIGA monitors its client's application of the *US-UK Voluntary Principles on Security and Human Rights* and its social development program (SDP).

### MIGA's core due diligence failures

According to the CAO, MIGA's ESRPs do not address significant social issues, including in-migration and related public health implications, the adequacy of consultation, and, most critically, the potential for the project to exacerbate conflict and insecurity for local people. In fact, while MIGA evaluates the "risk of war and civil disturbance to the assets or activities of the project" because they have a "bearing on the premium clients pay," it does not consider the risks that the project or its security arrangement pose to local communities.<sup>2</sup> This omission

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<sup>1</sup> "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." (p. ii)

<sup>2</sup> CAO Audit, Section 2.2.1, p. 8.

by MIGA when considering a mining project in a country plagued by natural resources-related conflict raises serious concerns about its ability to operate in post-conflict environments.

As you know, in August 2004, the World Bank's Board approved the Management Response to the Extractive Industries Review (EIR), which stated that IFC and MIGA clients would be required to comply with the *US-UK Voluntary Principles on Security and Human Rights*. Despite this commitment, the CAO found that MIGA lacks the expertise to advise clients on implementation and to assess their clients' ability to comply with the Voluntary Principles.<sup>3</sup> In fact, "neither MIGA nor Anvil recognized the critical distinction between the Voluntary Principles and conventional security".<sup>4</sup> Lastly, the CAO found that Anvil's risk assessment did not conform to a number of provisions in the Voluntary Principles.<sup>5</sup>

To address these weaknesses, the CAO's audit recommends "in situations where conflict, security, and human rights are of concern, MIGA require clients to systematically apply the Voluntary Principles". The CAO also recommends that MIGA "[develops] 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".<sup>6</sup>

However, further clarifications are required with respect to Bank Group operations in post-conflict/conflict-prone countries with weak governance, particularly in light of the Bank's EIR commitments.

- The security section of IFC's Performance Standard 4 requires clients to assess the "risks to those within and outside the project site posed by its security arrangements." In addition, clients are required to make reasonable inquiries to ensure security personnel are not implicated in past abuses. PS4 also requires clients to assess risks arising from the use of government security personnel at their project site. However, most of the recommendations on risk assessment in the Voluntary Principles are not required under PS4.<sup>7</sup> Instead, key factors that are considered essential for accurate, effective risk assessments in the Voluntary Principles are merely optional.<sup>8</sup> For example, clients are not instructed to explicitly assess the risks of potential violence (beyond the immediate project site), including the root causes and nature of local conflicts and the potential for future conflict. PS4 also does not require clients to assess the how the existence of public or private security personnel could indirectly lead to adverse impacts to local communities. While clients are required to make reasonable inquiries to ensure private security personnel have not been implicated in past abuses, they do not have to assess the human rights records of public security forces, paramilitaries, local and national law enforcement. PS4 also does not require clients to assess the ability of the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses. In addition, PS4 does not require clients to assess the risks of

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<sup>3</sup> CAO Audit, Section 3.3.4, p. 20.

<sup>4</sup> CAO Audit, Section 3.3.4, p. 20.

<sup>5</sup> CAO Audit, Section 3.3.4, p. 21.

<sup>6</sup> CAO Audit, Section 4.2, p. 24.

<sup>7</sup> The introductory paragraphs in the Risk Assessment section of the Voluntary Principles state that circumstances will dictate the extent of inquiry, but that accurate, effective risk assessments should consider the following factors: identification of security risks, potential for violence, human rights records, rule of law, conflict analysis, and equipment transfers.

<sup>8</sup> Draft Guidance Note, September 2005: "It is important for clients to assess and understand the evolving risk environment of their operations, based on useful, reliable and regularly updated information. For clients with small operations in stable settings, a review of the operating environment can be relatively straightforward. For larger operations or those in unstable environments, the review will be more complex and may need to consider political, economic, law enforcement, military and social developments. If there is social unrest or conflict in the project's area of influence, the client should understand not only the risks posed to its operations and personnel but also whether its operations could create or exacerbate conflict and what measures it can take to avoid or mitigate adverse impacts on the situation and contribute to long-term stability. Clients should consider security risks associated with the entire range and all stages of their operational activities, including personnel, products and materials being transported. The assessment should also address negative impacts on workers and the surrounding communities, such as the potential for increased communal tensions due to the presence of security personnel or the risk of theft and circulation of firearms used by security personnel. (Citation: Draft Guidance Note 4, September 22, 2005, p. 70.)

providing lethal and non-lethal equipment to private or public security forces. Therefore, how will MIGA and IFC reconcile the gaps in what Performance Standard 4 prescribes and the more comprehensive approach detailed in the Voluntary Principles?

- Anvil did not report on the requisitioning of its vehicles or human rights abuses until after the *Four Corners*' program was aired in Australia.<sup>9</sup> According to the Voluntary Principles, companies should put in place policies and systems to ensure all incidents involving the use of force and allegations of human rights abuses are both recorded and reported. The IFC's Performance Standard 4 only calls on clients to report credible incidents to authorities<sup>10</sup>, but given the findings of the Dikulushi audit, what record keeping and reporting requirements will MIGA (and IFC) require of their clients in the future?
- The linkages between a country's primary dependence on natural resources for export and higher incidences of human rights abuses, particularly in post-conflict/conflict prone countries, are well established. These linkages were explored at length in the EIR and the Bank responded by requiring clients to follow the Voluntary Principles. However, the CAO audit of Dikulushi demonstrates that more needs to be done to take into account the human rights impacts of Bank-supported projects and to address MIGA's serious shortcomings in due diligence and project monitoring. How will MIGA (and the Bank Group) incorporate human rights impact assessments in their due diligence for projects in high-risk areas?
- How will MIGA specifically address post-conflict issues, including through the use of a conflict assessment framework, such as those covered by the Bank's OP 2.30 on Post-Conflict Development?
- Furthermore, what new reporting requirements will clients be expected to follow in order to demonstrate they are applying the Voluntary Principles over the life of the project? Will clients be required to re-assess periodically the project's risks to communities?

#### Dikulushi-specific recommendations

If there is one area of weakness in the CAO's audit, it is the lack of specific measures to: 1) monitor Anvil's implementation of the Voluntary Principles in the Dikulushi project; and 2) ensure the sound management of the social development program and trust fund in a transparent and accountable manner.

#### *Anvil's application of the Voluntary Principles*

While Anvil is apparently receiving advice on the application of the Voluntary Principles, robust mechanisms are urgently required to ensure that Anvil adheres to these principles. We strongly recommend that Anvil: 1) conducts a comprehensive risk assessment annually; 2) reports to MIGA annually on its experience and progress; and 3) commits to notifying MIGA should any future requisitioning of its vehicles or human rights abuses occur in the Dikulushi area or (in)directly as a result of the mine's presence. Regular reporting and monitoring of Anvil's progress will not only limit the risk of future incidents where the military or armed groups commit human rights abuses in the Dikulushi/Kilwa area, but will provide invaluable lessons for future Bank-supported projects in high-risk areas.

#### *Revenue sharing and social development program*

The CAO has raised a number of concerns with respect to the SDP and community trust fund and has recommended that MIGA "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

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<sup>9</sup> CAO Audit, Section 2.1.3, p. 6.

<sup>10</sup> "The client will investigate any credible allegations of unlawful or abusive acts of security personnel, take action (or urge appropriate parties to take action) to prevent recurrence, and report unlawful and abusive acts to public authorities when appropriate".

by the CAO are addressed.”<sup>11</sup> MIGA should require Anvil to disclose publicly annual reports on: 1) the SDP’s progress, including projects completed; and 2) the revenue sharing program, including third-party audits.

*Outstanding issues*

The questions Congolese and international civil society organizations raised concerning Anvil’s relationship with Katumba Mwanke were not addressed by the CAO audit. RAID will continue to actively work with the Department of Institutional Integrity on its investigation into these issues, and we look forward to the results of their work.

In closing, in light of the CAO’s audit and our recent February 2006 correspondence concerning the Bank’s mining sector reform programme and the Kinross Forrest and Global Enterprises contracts with Gecamines, we believe it is imperative that senior management evaluate its strategy in the DRC’s natural resources sector to ensure it is consistent with the Bank’s EIR commitments. The consequences of not doing so are simply far too great given the DRC’s precarious, post-conflict environment.

We look forward to a detailed response to the above questions, including reactions to the Dikulushi-specific recommendations, and to further consultation with your staff in the very near future.

Yours sincerely,



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<sup>11</sup> CAO Audit, Section 4.2, p. 24.