



Rights & Democracy
International Centre for Human Rights
and Democratic Development

Mr. Vern MacKay
National Contact Point
OECD Guidelines for Multinational Enterprises
Lester B. Pearson Building
125 Sussex Drive
Ottawa, ONT
K1A 0G2

Dear Mr. MacKay,

It is with great concern that Rights & Democracy learnt of the tragic events that took place in Kilwa in the Democratic Republic of the Congo last October and the alleged role of a Canadian company, Anvil Mining Ltd, in those events. I have read the report of the Congolese human rights organisation ASADHO *Association Africaine de Défense des Droits de l'Homme (ASADHO-Katanga) Rapport sur les violations des droits de l'homme commises à Kilwa au mois d'Octobre 2004* on what transpired in Kilwa and the violations of the rights of the local population by both the rebels and the Government troops. The fact that Anvil Mining Corporation of Canada provided logistical assistance in the form of air and ground transportation to the Congolese army has been acknowledged by the company in their press releases of June 7 and June 21, 2005.

Rights & Democracy realizes the complexity of determining responsibility in a case such as this, and acknowledges that there is no definitive legal answer to the question of what constitutes complicity in human rights violations. As you know, this is a key issue to be examined by the UN special representative on human rights and business that is the outcome of debates on this topic at the UN Commission on Human Rights this spring. However, we do not believe the company's response to date has been adequate: "Anvil had absolutely no choice but to provide the transport required by the DRC military and had no reason to believe that this would involve anything other than the lawful enforcement of the laws of the DRC." Given the extensive documentation on violations of human rights in the DRC as well as the well-known role of its substantial mineral wealth in the conflict, it is unfathomable that a company would have no concerns about how a rebellion might be "suppressed."

As you know the OECD Guidelines for Multinational Enterprises are not very detailed on this issue stating only that "enterprises should...respect the human rights of those affected by their operations consistent with the host government's international obligations and commitments." As

you know, the Democratic Republic of the Congo has acceded to the International Covenant on Civil and Political Rights and as such has legally binding obligations with regard to the right to life, liberty and security of the person, ensuring that its citizens are not subjected to cruel, inhuman or degrading treatment nor to arbitrary detention. There are also reports of rape and violence against women that are fully consistent with other instances in the DRC where women have endured particular suffering. An exhaustive inquiry would undoubtedly reveal a number of other human rights concerns, as well as pertinent domestic and international legal standards.

Rights & Democracy formally supports the request of the Canadian, Congolese and British organisations who want the Government of Canada investigate this case, as stated in a joint press release from Entraide missionnaire, Miningwatch Canada, the Regroupement pour la responsabilité sociale des entreprises and Africa Files. We believe this investigation can and should be done under the auspices of the National Contact Point. This will provide an opportunity to usefully interpret the Guidelines, expand its under-utilized investigative role, and hopefully contribute to a process for achieving justice for the people in Katanga whose lives and families were devastated by these events.

The allegations about Anvil's role are extremely serious and indeed highlight the need for the OECD Guidelines to be more precise regarding expectations of companies in conflict zones. The second principle of the Global Compact states that companies must "make sure they are not complicit on human rights abuses", clearly placing an onus for due diligence on the corporation. An even stronger statement can be found in the UN Norms for Business: "Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure the respect of and protect human rights recognized in international as well as national law..." Companies need to be aware of the human rights environment in which they are operating and must take active steps to ensure that their activities have a positive rather than a negative impact on human rights. It appears that this was not done in Kilwa.

Rights & Democracy urges a full and impartial investigation into these serious allegations. I am enclosing documentation that may facilitate your work and please be assured that we are available to assist the NCP in its attempt to resolve this case and ensure that such events do not re-occur in the future.

Best regards

Jean-Louis Roy

President, Rights & Democracy

cc. Denis Tougas, Entraide missionnaire
Bill Turner, President and CEO, Anvil Mining Ltd