



# MiningWatch Canada

---

## Mines Alerte

Suite 508, 250 City Centre Avenue, Ottawa, Ontario, Canada K1R 6K7  
tel. (613) 569-3439 — fax: (613) 569-5138 — [info@miningwatch.ca](mailto:info@miningwatch.ca) — [www.miningwatch.ca](http://www.miningwatch.ca)

### **Statement Regarding Quebec Court of Appeal Decision in *Canadian Association Against Impunity v. Anvil Mining Limited***

March 21, 2012

MiningWatch Canada is a coalition of 21 environmental, Indigenous, labour, and international organizations created to promote responsibility in the mining sector through research and policy advocacy, as well as linking communities affected by mining, researchers, and organizations to provide mutual support and share experiences, expertise, and strategies. Ensuring that communities affected by mining have adequate protection but also appropriate opportunities for legal remedy for any damages they suffer is an important aspect of our work. We work to support communities and groups undertaking legal actions in their own defence and seeking redress for harms they have suffered in addition to seeking the formulation and implementation of clear and enforceable protections and remedies in Canadian law.

We are writing to convey our grave disappointment and concern regarding the decision made by the Quebec Court of Appeal on January 24th, 2012, to overturn the lower court's findings in the Canadian Association Against Impunity's class action case against Anvil Mining Limited ("Anvil Mining"), finding that the requirements of the *Quebec Civil Code* (Art. 3148(2)) had not been met with respect to jurisdiction. The facts of the case and the judgments are summarised elsewhere, but the suit is against Anvil Mining for its alleged involvement in a 2004 massacre near its Kilwa mine in the Democratic Republic of Congo (DRC). Our concern centres on the apparent denial of the possibility that the victims of that violence could seek redress from a Canadian company in Canadian courts, with the ancillary concern that transnational corporations, mining companies in particular, and Anvil Mining in specific, may be able to use Canada as a corporate domicile "flag of convenience".

Canadian-based mining operations internationally have been a cause for concern for many years, and a core concern of MiningWatch Canada based on complaints from communities affected by their operations as well as non-governmental organisations, academics, lawyers, and even legislators in many countries. Mining inevitably brings serious environmental, social, and economic impacts, and different jurisdictions have different capacities to prevent, manage, and mitigate those impacts. Especially, but certainly not exclusively in less-developed countries, impunity and governance gaps or deficiencies lead to heightened vulnerability for local communities – to human rights abuses, environmental damage, social conflict, and economic marginalisation.

In 2008 the UN Secretary-General's Special Representative on Business and Human Rights, John

Ruggie, in his “Protect, Respect and Remedy” framework,<sup>1</sup> identified as a core problem the “governance gaps” that “provide the permissive environment for wrongful acts by companies...without adequate sanctioning or reparation.” Ruggie goes on to discuss the potential obstacles to extraterritorial regulation, but with respect to torts concludes that:

*States should strengthen judicial capacity to hear complaints and enforce remedies against all corporations operating or based in their territory, while also protecting against frivolous claims. States should address obstacles to access to justice, including for foreign plaintiffs – especially where alleged abuses reach the level of widespread and systematic human rights violations.*<sup>2</sup>

Canada is no exception. If anything, Canada bears a unique responsibility in this matter as the home state of some 60% of the world’s mining companies.<sup>3</sup> Most of these are “juniors”; exploration companies with no to limited actual mining operations. While Canada was once home to a larger portion of major mining companies such as Inco, Falconbridge, and Alcan, recent takeovers have left a smaller number of Canadian majors, but a full fleet of juniors. At the time of writing the Toronto Stock Exchange claimed 1,662 mining company listings, most of which would also be domiciled in Canada, and most of which would be considered “juniors”. This is significant because on closer inspection a number of them were originally based elsewhere and have moved to Canada by establishing offices here or buying a Canadian company to take over its offices and stock listing. Anvil Mining is one example, incorporated in the Northwest Territories, listed on the Toronto Stock Exchange, operating from an office in Quebec, and with offices in Australia, South Africa, and the DRC. (It is also not uncommon to find companies whose domicile and nominal head office are in Canada but whose real headquarters are elsewhere, such as Ivanhoe Mines, registered in the Yukon and headquartered in Vancouver but controlled by Singapore-based Ivanhoe Capital.)

There are operational reasons that mining companies should want to be Canadian; there is considerable mining-related expertise in Canada both in actual mining operations and in mining finance. The Canadian government also provides mining companies with significant political and financial support (via Export Development Canada political risk insurance and loan guarantees, Canada Pension Plan and Canada Investment Fund for Africa investments, etc.). But perhaps the most important considerations are legal and financial, such as the Foreign Resource Expense (FRE) and Foreign Exploration and Development Expense (FEDE)<sup>4</sup> and disclosure requirements that are less onerous than other jurisdictions such as the United States.

Canada’s attractiveness as a home for mining companies has not been matched by a concomitant assumption of responsibility by Canadian legislators or Canadian courts when it comes to the effects of those companies’ activities. MiningWatch hears of many more cases of human rights abuse, environmental destruction, and labour violations than we can possibly attend to, yet lawsuits like *Ramirez v. Copper Mesa* have failed,<sup>5</sup> as have even extremely limited legislative efforts like Bill C-300,

---

<sup>1</sup> *Protect, Respect and Remedy: a Framework for Business and Human Rights*. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. April 7, 2008. p.3. <http://198.170.85.29/Ruggie-report-7-Apr-2008.pdf> viewed March 20, 2012.

<sup>2</sup> *Ibid.*, p.23.

<sup>3</sup> “Government of Canada Positions Mining Industry for Continued Success”. May 11, 2009. <http://www.nrcan.gc.ca/media-room/news-release/36/2009-05/1938> viewed March 20, 2012.

<sup>4</sup> “Mining-Specific Tax Provisions”. June 30, 2011. <http://www.nrcan.gc.ca/minerals-metals/business-market/mining-taxation-regime/4212> viewed March 21, 2012.

<sup>5</sup> “Ecuadorians Lose Appeal in Lawsuit Against Canadian Mining Company and TSX”. March, 2011. <http://ramirezversuscoppermesa.com/> viewed March 20, 2012.

*The Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act.*<sup>6</sup>

Instead there is only an array of voluntary guidelines on different aspects of corporate operations, unenforceable and unverifiable. The announcement on March 20, 2012, that Anvil, having finalised the sale of its shares to Hong Kong-listed Minmetals Resources Limited, has now delisted from both the Toronto and Sydney Stock Exchanges may pose yet another obstacle the Congolese victims will have to confront in their tireless quest for justice. The company must be held accountable and liable for its actions regardless of changes in ownership, since its domicile and chain of responsibility at the time of the Kilwa massacre are indisputable.

If Canada is to be a true global leader in mining, mining investment must be accompanied by the appropriate safeguards and remedies. Meaningful safeguards do not exist. The Quebec Court of Appeals decision in this case would deny the victims the possibility of remedy as well.

Yours sincerely,

A handwritten signature in black ink that reads "Jamie Kneen". The signature is written in a cursive style with a large initial "J" and a stylized "K".

Jamie Kneen  
Communications and Outreach Coordinator  
MiningWatch Canada

---

<sup>6</sup> “Vote on Bill C-300 Signals Strong Momentum Towards Regulation of Canadian Mining Industry Overseas”. October 28, 2010. <http://www.miningwatch.ca/article/vote-bill-c-300-signals-strong-momentum-towards-regulation-canadian-mining-industry-overseas> Viewed March 20, 2012.