

Kilwa Trial: a Denial of Justice

A Chronology October 2004 – July 2007

17 July 2007

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ACIDH

Action Contre l'Impunité pour les Droits Humains
Action against impunity for human rights

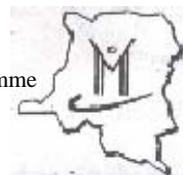


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RAID
*Rights & Accountability in
Development*

ASADHO/KATANGA

Association Africaine de Défense des Droits de l'Homme
African Association for the defence of Human Rights



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I. THE KILWA INCIDENT

14 October 2004: At around 2am, a group of six or seven people attempted to occupy the small town of Kilwa, in the province of Katanga, in the southeast of the Democratic Republic of Congo (DRC). They claimed to belong to a hitherto unknown rebel movement calling itself the Revolutionary Movement for the Liberation of Katanga (*Mouvement Révolutionnaire pour la Libération du Katanga*, MRLK). Anvil Mining's security personnel had discussions with the rebel leader in Kilwa who told them that they had no intention of taking over Anvil Mining's Dikulushi mine,¹ located in the area. Anvil Mining stated "the rebel group appears to be a small band of disaffected individuals seeking representation".²

14 – 15 October 2004: Anvil Mining evacuated its staff from the Dikulushi mine to the provincial capital, Lubumbashi, using charter planes via the airport at Dubie. Anvil Mining confirmed that soldiers were flown into the area on the return journey. Two expatriates and two Congolese members of Anvil Mining's security staff remained on site to monitor the situation.³

15 October 2004: Anvil Mining issued a press release on the day the military attack started (see below), stating that the company "expects the situation to be resolved within the next 72 hours".⁴

Most of Kilwa's population fled when it was announced over the radio that troops being sent to the town would show no mercy and that anyone who remained would be treated as an insurgent.⁵

Soldiers of the 62nd Infantry Brigade of the Congolese Armed Forces (*Forces armées de la République démocratique du Congo*, FARDC) arrived in Kilwa. The FARDC had used Anvil Mining trucks for the journey from their base in Pweto, 135 kilometres away. Under the command of Colonel Ilunga Ademar,⁶ the soldiers launched an attack to recapture the town of Kilwa. In the course of this operation, serious human rights violations – including scores of summary executions, arbitrary detentions, pillage and extortion – were reportedly perpetrated by the FARDC against the civilian population. In a confrontation lasting two hours, the FARDC did not sustain any casualties.⁷

Almost three years after these events in Kilwa, it emerged that President Joseph Kabila had ordered the town to be retaken within 48 hours.⁸

16 October 2004: Pierre Mercier, a Canadian national and General Manager of Anvil Mining Congo, arrived in Kilwa at about 9am for the first time after the uprising.⁹ He met Peter Van Niekerk, Anvil Mining's security officer, who had remained on site at the Dikulushi mine, and Colonel Ademar.¹⁰ The Dikulushi mine restarted its operations.

The FARDC carried out systematic house-to-house searches, which lasted from 16 to 18 October.¹¹

Anvil Mining staff did not report the deaths of civilians or human rights abuses during the Kilwa incident to the United Nations (UN) or to diplomats.¹²

**Extracts from the preliminary account of human rights violations
carried out by the 62nd Brigade in Kilwa¹³
by MONUC (UN Mission in the Democratic Republic of Congo)**

'In the early hours of 14 October 2004, at around 2am, a group of six to seven people, led by a fisherman of Pweto in his twenties, Alain Kazadi Makalayi, who claiming to be the General Major of the *Mouvement Révolutionnaire de Libération du Katanga* (MRLK) (Revolutionary Movement for the Liberation of Katanga), attacked and briefly occupied Kilwa.' *Paragraph 8*

'This was the time [about midday on 14 October 2004] an estimated ninety per cent of the 48000 inhabitants of Kilwa chose to flee the town and either went by boats to the island of Nshimba or took the roads to hide in the bushes... The assailants opposed no resistance to these departures.' *Paragraph 13*

'On 15 October 2004, at around 4.30pm, the 62nd Brigade of Pweto (6th MR) under the command of Colonel Ilunga Ademars, launched their attack, with vehicles from the local mining company (Anvil Mining). MONUC was told that the operation was mandated by authorities in Kinshasa that bypassed the 6th Military Region Command.' *Paragraph 14*

'Before entering the town, FARDC shelled Kilwa, as a result five or six houses were allegedly set alight. Clashes between FARDC and the insurgents might have lasted between one and two hours concentrating in the market area and the road to the airfield. FARDC suffered no casualties. Then, FARDC door-to-door searches began and lasted until the afternoon of 16 October. During this period, FARDC were reportedly responsible for summary executions and other human rights violations.' *Paragraph 15*

'MONUC could also locate and visit two mass graves and one individual grave in the outskirts of Kilwa. One of the three graves allegedly contains 13 bodies of victims of summary executions.' *Paragraph 27*

'FARDC 62nd Brigade members are alleged to have committed summary executions in Kilwa under the orders of their commander, Colonel Ademars. The latter is a close associate to General John Numbi, the Kinshasa-based Chief of Aerial [*sic*] Force of the *Etat Major*, who is known to have the de facto command of troops in this part of Katanga.' *Paragraph 37*

17 October 2004: Augustin Katumba Mwanke¹⁴ (an adviser to President Joseph Kabila and member of Anvil Mining's board), Urbain Kisula Ngoy (then Governor of Katanga province) and General Dieugentil Alengbia Nzambe (Commander of the 6th Military Region) visited the island of Nshimba where a large part of the population of Kilwa had fled for safety. They encouraged the displaced people to return to Kilwa.¹⁵

October 2004 onwards: The soldiers who had carried out the violations remained in the Kilwa area for a further nine months. During this time, victims and relatives of people who had been summarily executed or who had disappeared were intimidated or threatened. Families of those who were killed were threatened if they showed signs of grief in public.¹⁶

II. THE INVESTIGATION: DENIAL, DELAY AND INTIMIDATION

21 October 2004: MONUC requested to travel to Kilwa on 21 October, but General Dieugentil Alengbia Nzambe delayed the mission to allow his deputy, General Sylvain Tchokwe, to travel to Kilwa before MONUC. Potential key witnesses in Kilwa were warned by the military not to collaborate with MONUC.¹⁷

22 – 24 October 2004: MONUC's Special Investigations Unit visited Kilwa to conduct an investigation. General Dieugentil Alengbia Nzambe informed MONUC that the intervention of the FARDC to bring safety back to Kilwa was made possible thanks to logistical assistance provided by Anvil Mining.¹⁸

27 October 2004: MONUC made public a summary of the results of its inquiry into the Kilwa incident at a press conference.¹⁹

28 October 2004: After initial obstruction by the military authorities, MONUC was granted access to a group of prisoners who had been arrested in Kilwa and transferred to Lubumbashi. The prisoners were detained without charge and denied access to lawyers and families. According to the military, two prisoners, including the leader of the rebels, had died as a result of their injuries.²⁰

10 November 2004: MONUC submitted its report on the Kilwa events to the Congolese government. The report stated that 73 people had been killed, including 28 who were summarily executed. MONUC's overall estimate of 100 civilian deaths included people who had drowned while trying to escape the FARDC's attack on 15 October.²¹ A provisional report by the Congolese Red Cross, whose staff were present in Kilwa in the immediate aftermath of the violations, documented 81 deaths.²² At this stage, no steps were taken by the Congolese government to investigate the events in Kilwa.

24 November 2004: RAID interviewed Pierre Mercier about the Kilwa incident. During the interview, which was held in Anvil Mining's office in Lubumbashi, Pierre Mercier confirmed that the military had made use of planes leased to Anvil Mining to transport soldiers. He acknowledged that some innocent people may have been detained by the FARDC, but he made no reference to the requisitioning of Anvil Mining's vehicles by the FARDC (see text boxes *The use of Anvil Mining's logistics (I) & (II)*).

December 2004: A summary of MONUC's investigation was contained in the regular report on MONUC's activities to the UN Security Council.²³

January 2005: ASADHO/Katanga (Association Africaine de Défense des Droits de l'Homme), a Lubumbashi-based human rights organisation, published a report about the Kilwa incident, which was widely disseminated. Copies were sent to the Congolese authorities.²⁴

28 January 2005: Anvil Mining's quarterly report referred to the Kilwa incident, stating that "the government and military response on both provincial and national levels was rapid and supportive of the prompt resumption of operations". The report makes no reference to the FARDC's requisition of Anvil Mining's vehicles.²⁵

11 February 2005: General Dieugentil Alengbia Nzambe stated on UN-run Radio Okapi that Colonel Ilunga Ademar and his soldiers should be congratulated for what they did at Kilwa.²⁶

28 February 2005: The Congolese human rights organisation ACIDH (Action Contre l'Impunité pour les Droits Humains) wrote to Anvil Mining about the alleged use of the company's vehicles, which had facilitated human rights violations by the FARDC at Kilwa. In its letter, which was copied to senior Congolese government officials, and accompanying news release, ACIDH called on Anvil Mining to stop its campaign of damage limitation and to meet human rights organisations to clarify its position regarding the Kilwa massacre. The ACIDH news release called on the prosecution services to verify what precisely had happened at Kilwa and if necessary to prosecute those responsible. It also called on the Congolese government to protect human rights defenders against threats and to instigate inquiries into senior state officials and members of international organisations who put mining interests above the security of the population. ACIDH also referred to a campaign of intimidation against Congolese human rights activists and international civil servants.²⁷ Bill Turner, Chief Executive Officer (CEO) of Anvil Mining, confirmed to RAID that he had received this letter, but ACIDH did not receive a reply.

5 June 2005: *Four Corners*, the flagship current affairs television programme of Australian Broadcasting Corporation (ABC), broadcast a documentary: *The Kilwa Incident*. In a lengthy interview with *Four Corners*, Bill Turner, the CEO of Anvil Mining, did not state at any point that the planes or Anvil Mining's vehicles were requisitioned by the army.²⁸

MONUC Report's allegations concerning Anvil Mining's role in the Kilwa incident

“According to eye-witness testimonies obtained by MONUC, the FARDC used vehicles from the Anvil Mining company during their operation in Kilwa. These vehicles were reportedly used to transport looted goods as well as corpses – which may have included victims of summary executions – to the site in Nsensele where MONUC has located two mass graves and one single grave. Anvil Mining has confirmed to MONUC that the FARDC used its vehicles, but has denied that they were used to transport corpses or looted goods. Anvil Mining has also admitted that planes sent by the company to evacuate its personnel to Lubumbashi transported around 150 FARDC soldiers to the operation zone on 14 and 15 October. These planes were also used to transfer to Lubumbashi some of the suspected rebels who had been arrested by the army after its counter-attack on Kilwa. MONUC was able to confirm that three of Anvil Mining's drivers drove the company's vehicles used by the FARDC [footnote: ‘MONUC's information according to which an international security officer of Anvil was also in the vehicles used by the army was denied by Anvil’] and that food rations were supplied to the armed forces – according to Anvil – in order to prevent any risk of the civilians being looted. Anvil has also admitted that it contributed to the payment of a certain number of soldiers.”²⁹

29 June 2005: Colonel Ilunga Ademar was arrested in Lubumbashi in connection with arms trafficking and other offences unrelated to the Kilwa incident.

1 July 2005: ASADHO/Katanga issued a press release calling for the prosecution of Colonel Ilunga Ademar in relation to the FARDC operation in Kilwa and for Anvil Mining's role in the events to be investigated.³⁰

7 July 2005: Donatien Nyembo Kimuni, press attaché of the provincial government of Katanga, criticised ASADHO/Katanga on television (Radio Télévision Nationale Congolaise, Station du Katanga, RTNC/Katanga), for attacking investors with the intention of ‘plunging the province into poverty.’³¹

13 July 2005: Colonel Ilunga Ademar was charged with war crimes and other crimes during the October 2004 military operation in Kilwa.

A mob identified as supporters of the Mazembe football club marched through the centre of Lubumbashi and threatened ASADHO/Katanga lawyers in their offices. The mob warned ASADHO/Katanga not to continue attacking Anvil Mining. Local police failed to respond to ASADHO/Katanga's requests for assistance. The march had been authorised by the then Governor of Katanga, Urbain Kisula Ngoy.³² The football club's chairman, Moïse Katumbi Chapwe, is one of Anvil Mining's Congolese business associates and has been Governor of Katanga since early 2007.

15 July 2005: RAID wrote to Bill Turner asking him to distance Anvil Mining publicly from acts of intimidation against the Congolese NGO by people claiming to be defending the interests of the company.³³ RAID did not receive a response.

18 July 2005: During an early morning radio programme, *Panorama*, broadcast on state-controlled RTNC/Katanga, a local journalist, Djibril Kasende Haruna, issued threats in Swahili against “anyone who is going against the interests of Anvil Mining” and threatened the victims of the Kilwa incident.³⁴

24 – 25 August 2005: RAID visited Anvil Mining’s Dikulushi Mine and interviewed Bill Turner and other Anvil Mining managers. They also interviewed local chiefs and other witnesses and visited Nsensele, where the bodies of people allegedly summarily executed were buried in an old laterite quarry. During the visit, the RAID representative was accompanied by Anvil Mining staff. The driver of the Anvil Mining vehicle told her that he had been deployed to drive the FARDC at the time of the Kilwa incident.³⁵

24 August 2005: Anvil Mining gave RAID a copy of a letter from the then Governor of Katanga, Urbain Kisula Ngoy, addressed to the company’s General Manager, dated 11 June 2005. The letter, dated eight months after the events, states that Pierre Mercier received a requisition request from the Governor to assist the FARDC with logistical support.³⁶

5 September 2005: The Governor of Katanga, Urbain Kisula Ngoy, summoned several local NGOs, including ACIDH, ASADHO/Katanga and Centre des Droits de l’Homme et du Droit Humanitaire (CDH), to meet Bill Turner, CEO of Anvil Mining, in front of the press in Lubumbashi. The Governor told the NGOs that they should defend the mining companies and not discourage investors.³⁷

September 2005: RAID received a copy of the final MONUC report on the Kilwa incident, after making a request in person to William Swing, MONUC Chief of Mission. The UN never published the report - which implicates people close to the government of President Kabila - but released it only to interested parties on personal application.

13 – 14 October 2005: MONUC facilitated a visit by the military prosecutor, Colonel Eddy Nzabi Mbombo, to Kilwa, Nsensele (the site of the unmarked graves) and Anvil Mining’s Dikulushi mine.³⁸ According to observers, dozens of victims and witnesses lined up for four days to meet the prosecutor and begged him to establish the truth and bring the perpetrators to justice.³⁹

January 2006: The military prosecutor identified 12 soldiers suspected of complicity in the crimes committed in Kilwa, but received no assistance following his request to the Commander of the Military Region of Katanga to facilitate their arrests.⁴⁰

February 2006: The World Bank's Compliance Advisor Ombudsman (CAO) issued a report of an audit carried out on the orders of World Bank President Paul Wolfowitz into the Multilateral Investment Guarantee Agency's (MIGA) due diligence when providing political risk insurance for Anvil Mining's Dikulushi project. The report states that MIGA noted that soldiers were stationed at the Dikulushi mine and that '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'. The CAO report continues: '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.' The CAO, in assessing Anvil Mining's understanding and application of the Voluntary Principles – guidelines accepted by Anvil Mining concerning, *inter alia*, security and human rights – states that 'shortcomings include the absence of ... 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'.⁴¹

August 2006: After sustained pressure, seven soldiers were arrested in connection with the Kilwa events and transferred to Lubumbashi to await trial.

12 October 2006: The military prosecutor sent the case to trial (*décision de renvoi*). Nine FARDC soldiers were accused of war crimes, arbitrary arrests and detention, torture and murder (the nine include Colonel Ilunga Ademar, the seven soldiers arrested in August, and one soldier who was never arrested and was tried in absentia). Three foreign employees of Anvil Mining were charged with aiding and abetting the FARDC in the commission of the crimes. (See text box below for details of the charges.) Under the Congolese legal system, a case in which military personnel and civilians are implicated should come before a civilian judge. However, at the present time, only the Congolese military penal code recognises war crimes and crimes against humanity. The military court's assumption of jurisdiction over civilians in this case has subsequently been condemned by the United Nations High Commissioner for Human Rights.⁴²

Charges against Colonel Ilunga Ademar, eight other FARDC soldiers and three Anvil Mining employees

The indictment charges Colonel Ilunga Ademar and eight other FARDC soldiers with various crimes related to breaches of the Geneva Conventions and Additional Protocols in connection with events in Kilwa in October 2004 and in Pweto between January and April 2005. Colonel Ademar has been charged with, *inter alia*, shelling the town of Kilwa with 61 and 81 millimetre mortar bombs without taking prior steps to observe the level of threat, which resulted in the destruction of homes. The most serious charge relates to the summary execution of twenty men and five women, at the village of Nsensele. According to the indictment, none of the victims had taken part in the small-scale rebellion that was the justification for the military operation. The FARDC soldiers are also charged with arbitrary detention, rape and looting.

The indictment named Anvil Mining and three individual Anvil Mining employees⁴³:

1. Pierre Mercier, a Canadian national who was the General Manager of Anvil Mining's Congolese subsidiary, Anvil Mining Congo, and the Deputy General Manager of the Perth-based company, Anvil Mining NL;
2. Peter Van Niekerk, a South African national, Anvil Mining's former head of security at the Dikulushi mine;
3. Another South African national identified only as Cedric (believed to be Cedric Kirsten, Anvil Mining's former Security Manager at Dikulushi, although Anvil Mining has not confirmed this).

The three men are accused of having "voluntarily failed to withdraw the vehicles placed at the disposal of the 62nd Brigade in the context of the counter-offensive of [15-18] October 2004 to recapture the town of Kilwa" and of having "knowingly facilitated the commission of war crimes by Ilunga Ademar and his men".⁴⁴ Anvil Mining's lawyers noted the absence of a specific charge against Cedric, but the prosecution stated that the charges were included in the collective indictment.⁴⁵

In a public reaction, Anvil Mining Limited stated that "the allegations against Anvil Mining Congo sarl and the above mentioned persons are unfounded and without merit."⁴⁶

At the start of the trial, at a hearing on 27 December 2005, the military prosecutor, in response to a question from Anvil Mining's lawyer, clarified that it was Anvil Mining's agents who had been charged and not the company Anvil Mining as a moral person. Only in the event of Anvil Mining employees being found guilty would Anvil Mining the company be liable for damages.⁴⁷

October 2006: According to several sources, Anvil Mining's CEO Bill Turner had discussions with the office of President Kabila in Kinshasa.⁴⁸ The content of their conversation is not known.

19 October 2006: The military prosecutor, Colonel Nzabi, was summoned to Kinshasa ostensibly by the military judicial authorities, but in reality on the orders of the head of President Kabila's military household. He was made to stay there for almost one month and put under pressure to drop the charges against the Anvil Mining employees. After an international outcry about undue political interference, he was allowed to return to Lubumbashi.⁴⁹

27 October 2006: Before the trial started, a Congolese lawyer, who was an advisor to the international organisation Avocats Sans Frontières (ASF, Lawyers Without Borders), joined the legal team acting for the Anvil Mining employees. ASF had been previously asked by MONUC to represent the victims. Until then, the same Congolese lawyer had been advising the lawyers representing the victims and had been involved in confidential and sensitive discussions about legal strategies.

III. THE TRIAL: REPLACEMENT OF MILITARY PROSECUTOR AND FURTHER DELAYS⁵⁰

12 December 2006: The Kilwa trial opened before the military court of Katanga in Lubumbashi (case number 010/06).

27 December 2006: At a hearing at which seven FARDC soldiers and one Anvil Mining employee were present, lawyers for the Anvil Mining employees entered objections to the legality of the summons. Pierre Mercier, Anvil Mining's former General Manager in the DRC, who had returned to Canada, requested that he be exempted from appearing in person. His request was refused. The main military defendant, Colonel Ademar, claimed not to understand French (the operating language of the court). However, while in pre-trial detention, he had been interviewed in his cell by representatives of an international human rights organisation and conversed in French. He had also given them a document in French outlining his version of events. The reason for this pretence may have been to try to get the signed statements he made to the prosecutor – given by Ademar in Swahili, but translated into French – ruled inadmissible.⁵¹ In the transcript of his official statement to the prosecutor dated 5 July 2005, shortly after his detention (extracts of which are reproduced below), Colonel Ademar made no reference to any requisition order:⁵²

Question 8:

Can you describe how the Kilwa operation unfolded?

Reply 8:

On 13 October 2004, while at Pweto, I received a message from the 6th Military Region, instructing me to go to Kilwa, because there were insurgents. I replied that I did not have any means of transport. After the contact between the 6th Military Region and Anvil Mining, two trucks were placed at our disposal. These enabled me to take a company [of soldiers], those of Captain Koko, who was at Pweto.

Then I requested the Comd Bn [Commander of the Battalion] to send another company of reinforcements the following day.

Leaving Pweto at about 23 hours, we arrived 15 Kms outside Kilwa the following day around 15 hours.

It was here that we encountered the population fleeing from Kilwa...

The prosecutor noted at the end of the statement that Colonel Ademar handed him a document entitled (in English): “Agenda for liaison meeting with FARDC officials from Pweto”. No further details were supplied as to the contents of this document.

18 January 2007: The court dismissed the objections by the lawyers for the Anvil Mining employees and ruled that the trial should continue, if necessary in the absence of two of the Anvil Mining employees. At this stage, only Peter Van Niekerk had attended the court in person; Pierre Mercier was represented by his lawyer. Cedric, the third Anvil Mining employee, never attended the court hearings and is believed to have left the DRC.

19 January 2007: Colonel Ademar’s lawyers called for the replacement of the presiding judge, accusing him of bias. The objection was overruled.

28 February 2007: Military prosecutor Colonel Nzabi was transferred to another jurisdiction (Kananga), despite warnings from MONUC and NGOs that removing the prosecutor, who was also the investigating magistrate, at this stage in the trial would be extremely disruptive.⁵³

The first prosecutor appointed to replace Colonel Nzabi was Lieutenant Colonel Kasongo Kyolwele, who had served as an advisor to Katumba Mwanke, when the latter was governor of Katanga (from 1998 to 2001). Being of a lower rank than Colonel Ademar, the new prosecutor had to be replaced: according to Article 67 of the Congolese Code of Military Justice, the military prosecutor and panel of judges must be composed of persons of the same or higher rank as the accused. Just before the court reconvened, another prosecutor, Colonel Shomari Fundi, who had little knowledge of the trial dossier, was assigned to the case.

The use of Anvil Mining's logistics (I)

'Presumed requisitions': Anvil Mining's evolving account of how the FARDC came to use the company's transport

- MONUC stated that the version of events provided to its investigators by Anvil Mining 'appears to contradict' earlier statements made by the company.⁵⁴ Moreover, Anvil Mining only first raised the alleged requisitioning of transport eight months after the Kilwa incident, even though they had numerous opportunities to do so earlier.
- Anvil Mining's news releases of 15, 18 and 21 October 2004, all of which refer to the October 2004 insurgency, make no reference to the use, request or requisition of the company's vehicles by the Congolese authorities.
- In his interview for the *Four Corners* programme, Anvil Mining's CEO Bill Turner did not state at any point that the planes or Anvil Mining vehicles were requisitioned. He referred to 'requested assistance', to having 'helped the military get to Kilwa', and stated that 'whatever number of vehicles that were necessary... we sent up there.'⁵⁵
- The report of the Compliance Advisor and Ombudsman (CAO) refers to the fact that Anvil Mining forwarded its news releases to MIGA at the time of the Kilwa incident, but states that the company made 'no reference to forceful requisitioning of vehicles, looting, or human rights abuses.' The CAO further states that 'MIGA had not been notified of either the March 2004 or October 2004 requisitions until after the *Four Corners* report was screened'.⁵⁶
- The first explicit public reference to a situation in which the company 'had no option but to agree to the request [for Anvil's air services and vehicles], made by the military of the lawful Government of DRC' was made on 7 June 2005, after the *Four Corners* programme had been broadcast.⁵⁷
- A subsequent Anvil Mining news release, dated 21 June 2005, referred to the DRC military commandeering Anvil Mining's vehicles, drivers and chartered aircraft.⁵⁸
- On 24 August 2005, at Dikulushi, Mike O'Sullivan, Anvil Mining's Vice President for Development and the Dikulushi Mine Site Manager, said that Anvil Mining received a communication from the military commander in Pweto requesting the use of Anvil Mining's vehicles; a more formal request for Anvil Mining to release its vehicles and to make seats available for soldiers on the planes was made later by the Governor of Katanga.⁵⁹
- Anvil Mining had 'informed MONUC that the logistics, the transport by plane and the drivers were provided to the army following requests "which could not be refused", made by the High commandment of the 6th Military Region, Colonel Ademars in Pweto and the governor of Katanga in Lubumbashi'. The company said it had objected to the 'presumed requisitions' to the Congolese authorities on 16 October 2004.⁶⁰ Anvil Mining referred to a previous incident in March 2004 when FARDC soldiers had taken the company's vehicles at gunpoint and had attacked an employee of Anvil Mining. The MONUC report continues: 'This version of events appears to contradict the statements made by the company to the Australian media on 6 June as well as the report of activities of Anvil Mining of December 2004, where it is stated that "the government and military response on both provincial and national levels was rapid and supportive of the prompt resumption of operations"'.⁶¹

- In August 2005, Anvil Mining gave RAID a copy of a letter dated 11 June 2005 from the Governor of Katanga, containing a ‘firm instruction to place at the disposal of the elements of the 6th Military Region logistical means for the transport of troops from Lubumbashi and Pweto to Kilwa and also to the interior of Kilwa.’ The letter refers to an earlier ‘official message’ from the Administrator of Pweto Region, dated 16 October, describing this instruction, but a copy of this message has never been produced.⁶²
- The lawyers for the Anvil Mining employees produced a letter, dated 21 October 2004, from the former Governor of Katanga, Urbain Kisula Ngoy, addressed to the Zambian authorities in which he requested Zambia’s cooperation in the repatriation of the Congolese refugees who, during the Kilwa incident, had fled to the island of Nshimba (on Lake Moero).⁶³ The letter stated that Anvil Mining would provide logistics. However, this letter, which was not even addressed to Anvil Mining, does not constitute a requisition of the transport used to bring the military from Pweto and Lubumbashi to Kilwa on 14 October 2004. The only written confirmation of the requisition produced by Anvil Mining – referred to above – is entirely retrospective and written eight months after the Kilwa incident. At no time was the court shown a formal order (*‘arrêté’*) from the Governor of Katanga, which is required for a requisition to be officially valid.

14 – 16 May 2007: After an adjournment of several months, the trial resumed in Lubumbashi with the new prosecutor, Colonel Shomari Fundi. Pierre Mercier appeared in court for the first time. Peter Van Niekerk also attended. The hearings focused on the alleged summary executions at Nsensele, the requisitioning of Anvil Mining’s vehicles and the issue of proportionality of the military’s use of force in the operation. Many of the military defendants denied the accusations concerning summary executions and rejected the signed statements that they had given to Colonel Nzabi, the previous military prosecutor. Neither the defendants nor their lawyers alleged that their earlier statements had been extracted under duress. In their earlier statements to the prosecutor, several soldiers admitted that they had been given orders by Colonel Ademar to shoot suspected rebels. A few stated that Colonel Ademar had also ordered the execution of civilians arbitrarily detained in Kilwa and at Pweto. One of the soldiers admitted that he had been ordered to execute people because they were Mai Mai insurgents.⁶⁴

15 May 2007: The court sought clarification about the circumstances surrounding the disappearance of 26 of the people alleged to have been summarily executed at Nsensele. The defendants denied all knowledge of these events. In his original statement to the prosecutor, one of the accused, Sub-Lieutenant Muhindo Tase, said that he was arrested by Colonel Ademar and that on 16 October 2004, he was in an Anvil Mining Land Cruiser when it crashed. He stated that had it not been for the accident, he believes he would have been executed at Nsensele.⁶⁵ In court, Tase stated that he was in the Anvil Mining vehicle with a group of civilians, travelling to an unknown destination along the road leading to Pweto. The accident happened en route. He woke to find himself in hospital. He had no idea what happened to the others.

16 May 2007: The proceedings focused on the alleged summary executions of 30 people at Nsensele by Lieutenant Mwelwa Sabata, acting on the orders of Col Ilunga Ademar. The defence noted the absence of any death certificates and the lack of proof that any such order had been given. The defence maintained that there was no evidence to substantiate the accusation that people were summarily executed at Nsensele. They claimed that the FARDC's response to the Kilwa incident was proportionate. The prosecutor replied that the charge was based on statements by the relatives of the victims and even those of some of the accused, who had acknowledged that they had received orders from Colonel Ademar to execute detainees.⁶⁶ The prosecutor said it was unlikely that death certificates could be produced in cases of summary execution.

André Bwalya, a prosecution witness, who had been with the commander of the MRLK during the insurrection, and who is serving a 20 year sentence for his involvement in the occupation of Kilwa, confirmed that there were only seven lightly armed rebels. He claimed that they had been able to capture the town simply by firing shots into the air. This version of events accords with the account given by MONUC and Pierre Mercier.⁶⁷ According to MONUC, the FARDC suffered no casualties during the clashes.⁶⁸ Indeed, the only deaths of FARDC soldiers mentioned by witnesses relate to the personnel killed in the Anvil Mining vehicle, which crashed on the road to Nsensele.⁶⁹ The Red Cross only confirmed the burial of five men in uniform, killed in a car accident.⁷⁰ In its verdict, the court referred to the death of 15 soldiers, but failed to name any of them.⁷¹

The Anvil Mining employees were questioned by the judges about the requisition order and the provision of vehicles to the FARDC: see text box *The use of Anvil Mining's logistics (II)*. The military prosecutor did not ask any questions or challenge changes in the defendants' statements about the alleged requisition.

Pierre Mercier stated that he had arrived in Kilwa on the morning of 16 October 2004 at about 9am. He stayed there for the day, accompanying senior Congolese political figures. He stated that, although he saw some injured soldiers, he was not interested in how they had been injured. He claimed that he was not told about the massacre.

The court announced that it would relocate to Kilwa. The relocation was not unexpected as the court had announced its intention of moving to Kilwa (and Pweto) in January 2007. Victims' lawyers and NGOs had strongly supported this relocation to bring the court closer to the scene of the crimes and to facilitate the hearing of eye-witnesses and victims.

The use of Anvil Mining's logistics (II)

The FARDC's use of Anvil Mining's vehicles: the defendants' versions of events

- At the trial, the defence argued that Anvil Mining had no choice but to provide vehicles and other logistical support to the FARDC (“alleged requisitioning”). However, since the Kilwa incident, Anvil Mining managers have given several different explanations about the circumstances in which the company provided assistance to the military.
- On 13 October 2006, Pierre Mercier was questioned by the military prosecutor. His responses are recorded verbatim in a transcript of his statement.⁷² The transcript is annotated by the prosecutor where Mercier made comments after re-reading the account he had given in his statement. Questioned about how, in his capacity as Anvil Mining's Executive Director [*sic* – Mercier was General Manager], he had handled the situation in Kilwa, Mercier states that he was in Kinshasa when he was informed that Kilwa had fallen into rebel hands:⁷³ “Given the importance of that town to Anvil Mining” [the prosecutor notes at the end of the transcript that Mercier later objected to his earlier use of that phrase; other employees refer to the town's importance to the company⁷⁴] “I telephoned one after the other the head of the ANR [the intelligence services] in Kinshasa and the Commander of the 6th Military Region (Comd 6 Rgn Mil) to see if they had information about the insurrection.”⁷⁵ He also called the Dikulushi mine to ask about the security situation. After speaking again by phone to the Commander of the 6th Military Region, it was decided to evacuate the 75 staff members (Congolese and expatriates) from the airport at Dubie. Jose Demoura (from whom Anvil Mining leased planes) advised Mercier that “It would be possible to use a Hawker Siddley 748 (HS) which could only take off with 25 people at the very most.” Mercier and Demoura estimated it would require three flights to evacuate everyone. “In the meantime, the Governor of the Province called me to put a request to me that was more an order to provide logistical means to the FARDC to allow them to retake Kilwa. Having asked him to send me a written request, [the Governor] said that a document would follow. As the planes would be empty leaving Lubumbashi for Dubie I asked Mr Demoura if he could transport the soldiers. He replied that he could take 50 soldiers on each flight; which was done. Not being on the spot, I don't know what happened with the vehicles. It is Peter who can give you more information about that.”⁷⁶
- When asked by the prosecutor if he nonetheless was aware that vehicles and drivers had been placed at the disposal of the 62 Brigade commanded by Colonel Ilunga Ademar, Mercier replied: “I have no idea, all I know is that vehicles had been requisitioned. If that was with or without drivers, I don't know.”⁷⁷
- When asked why after Kilwa was retaken, he had not ordered the return of his vehicles which had been used to transport troops, Mercier replied: “It was not me who was managing the crisis on site.”⁷⁸
- When asked if he was aware that Anvil Mining vehicles had been used to transport civilians to the village of Nsensele, 5 km from Kilwa, where they were to be executed, Mercier replied that he knew nothing about that.⁷⁹

- Mercier concludes: “It was after the visit to Kilwa by the authorities from Kinshasa and Lubumbashi that we were authorised to restart our activities. Finally, I insist that the vehicles placed at the disposal of the FARDC had been requisitioned by the Governor.”⁸⁰ (The prosecutor notes at the end of the transcript that Mercier objected to his earlier formulation in the last sentence. Previously in his statement, Mercier had said that he did not know what had happened with the vehicles and had no idea whether vehicles and drivers had been placed at the disposal of the 62 Brigade).
- In court on 16 May 2007, the Anvil Mining employees were questioned about the requisition.
- Pierre Mercier stated that there had only been one requisition order, which he had been given in a telephone call from the Governor of Katanga. The requisition order did not specify the length of time that it would remain in force.⁸¹ According to Mercier, Anvil Mining’s security staff at Dikulushi did not make any report to him about the equipment that had been put at the disposal of the FARDC.
- Peter Van Niekerk stated in court that Colonel Ademar had been given three trucks [to enable the military to get from Pweto to Kilwa] and that a jeep had been taken by force. The Anvil Mining employees stated that civilians had driven the trucks and a soldier had driven the jeep. In his original statement to the prosecutor on the subject of transport from Pweto, Colonel Ademar stated:⁸² “After the contact between the 6 Military Region and Anvil Mining, two trucks were placed at our disposal.” Under examination during the trial, the Anvil Mining employees acknowledged that two additional vehicles had also been used by Colonel Ademar (the latter had stated to the prosecutor that, after the arrival of the troops [in Kilwa], Anvil Mining took back the trucks and left two jeeps.⁸³ According to the Anvil Mining employees, Colonel Ademar took these vehicles by force. Later, court observers reported that one of the defendants, Peter Van Niekerk, acknowledged that on his own initiative at Dubie, he had placed a vehicle at Colonel Ademar’s disposal.⁸⁴
- A soldier from the Kilwa garrison, who had made his way from the town to the mine at Dikulushi after the rebel incursion, had previously told the prosecutor about Anvil Mining’s support for an abortive trip into Kilwa:⁸⁵ “On 15th October disguised as Anvil Mining workers, we tried to return to Kilwa to gather information for Lubumbashi. But as we arrived at the village of Shula, about 7 km from Kilwa, we found two rebels who started to fire shots into the air on seeing us. Taking fright, the driver decided to take us back to Dikulushi. It was finally on 16 October 2004 that we returned to Kilwa which by then had already been retaken by Colonel Ilunga Ademar’s troops.” The allegation that soldiers put on Anvil Mining uniforms in order to carry out reconnaissance in Kilwa was also reported by ACIDH.⁸⁶
- Colonel Ademar states in his testimony to the prosecutor:⁸⁷ “As far as I am concerned, a week after Kilwa was retaken the above mentioned company [Anvil Mining] put me up in its guest house situated next to the port and placed a vehicle, a Hilux, at my disposal so that I could liaise with the company managers based in Dikulushi 50 Kms from Kilwa.”
- At the end of the trial, the court stated: “the FARDC had kept the requisitioned vehicles for two weeks, the time required to consolidate peace in Kilwa.”⁸⁸

How Anvil Mining's vehicles were used

The alleged use of Anvil Mining vehicles to transport victims for execution

One survivor who testified in the Kilwa hearings stated that he and about 15 people were transported in a jeep belonging to Anvil Mining, driven by a company driver, while two other vehicles followed them to the place of execution at Nsensele.⁸⁹ This accords with earlier witness testimony describing how prisoners were taken to be shot in a white pick-up truck belonging to Anvil Mining and how, after the shooting, two motorcycles were heard leaving the place of execution.⁹⁰ Another witness stated that a pick-up carrying detainees, followed by Cedric on a motorcycle, had crashed on its way to Nsensele.⁹¹

A soldier from the Kilwa garrison, questioned by the prosecutor in October 2005, stated:⁹² “On that same date [16 October 2004], having instructed me to be disarmed, the Colonel sent me with Captain Shabani and Lt Mwelwa John, of the 62nd Brigade on a mission to go to the village of Nsensele and to execute the detainees, I don't know how many. But unfortunately, Lt John Mwelwa, who was driving the Land Cruiser had an accident...one of the victims of the accident, Captain Shabani died.”

The alleged use of Anvil Mining vehicles to transport looted goods and corpses

During the court hearings at Kilwa on 27 May 2007, Peter Van Niekerk admitted that the company had a number of motorcycles at Dikulushi but denied that he had given Colonel Ademar any motorcycles or that Anvil Mining's motorcycles had been used in the military operation.⁹³ Pierre Mercier and Peter Van Niekerk were asked if the Anvil Mining driver had informed them about the use made by the military of the company's vehicles.⁹⁴ Both denied having been told that company vehicles had been used to transport looted goods. Mercier stated that he was not at Kilwa at the time. Peter Van Niekerk was asked whether Anvil Mining used the laterite quarry at Nsensele. He confirmed that Anvil Mining had used and continued to use laterite from the quarry to grade the road to the Dikulushi Mine. He added that the quarry at Nsensele had been excavated before he started working for Anvil Mining. Van Niekerk denied that any equipment had been taken from the mine to help recover and bury the bodies of the people who had been killed.

MONUC had alleged that Anvil Mining vehicles had been used to transport corpses.⁹⁵ According to the testimony of a local Red Cross worker, who buried bodies at Nsensele: “The military moved around on a pick up truck belonging to Anvil Mining and we took a team of about eight Red Cross workers for the operation of removing and burying the bodies.”⁹⁶

There have also been various reports suggesting that Anvil Mining's earthmoving equipment was used to bury some of the bodies.⁹⁷ In a transcript of video interviews of traditional leaders conducted by local NGOs in July 2005, testimony was provided by the Chief of the Kilomba Grouping:⁹⁸

“I know that Ademar went to throw dead bodies into the places Anvil used to extract the sand; it is there he did the cemetery. If the company went to bury those bodies, it was on the MSF [*Médecins sans frontières*, Doctors without borders] demand which prevented the bad smell.”

IV. THE KILWA HEARINGS: PRESSURE ON WITNESSES AND ABSENCE OF THE VICTIMS' LAWYERS⁹⁹

23 May 2007: MONUC helicopters took court officials to Kilwa. However, the victims' lawyers did not succeed in travelling to Kilwa, so were absent during the hearings there. The absence of the victims' lawyers during this part of the proceedings further undermined the fairness of the trial and jeopardised the rights of the victims to a fair hearing, as illustrated below. Despite having given adequate notice of its intention to send an observer to the Kilwa hearings and there being places available on the flights, RAID was refused transport to the hearing in Kilwa.¹⁰⁰

24 May 2007: Only 150 villagers could be accommodated in the makeshift courtroom in Kilwa. The judge had to appeal for calm when over a thousand people tried to get into the building. Loudspeakers were set up outside to enable a thousand more to follow the proceedings. People loudly applauded when witnesses described the repression that had occurred in Kilwa.

The hearing focused on the alleged summary executions of civilians at Nsensele. The hearings were conducted in Swahili even though the first language of many of the witnesses and victims is Bemba. The defence lawyers vigorously questioned those who had come to testify, and in the absence of interpreters and with no legal support, some of the witnesses made contradictory statements. The newly-appointed military prosecutor was ill-equipped to deal with challenges by the defence to parts of the prosecution evidence. Nevertheless, a number of important witnesses testified.

One prosecution witness who had managed to escape the executions at Nsensele stated that he had been arrested on 15 October 2004 and "taken to be executed at 18.00". He alleged that about 15 people were transported in a jeep belonging to Anvil Mining while two other vehicles followed them. He stated that the driver of the jeep was from Anvil Mining. He fainted when the executions started. When he regained consciousness, he found himself surrounded by dead bodies. During the transfer from their temporary place of detention at the Hotel Kabyata (the operational headquarters of Colonel Ademar in Kilwa) to the quarry at Nsensele, the detainees were escorted by the military.

This testimony accords with earlier statements made by a local subsistence farmer, questioned by the prosecutor in October 2005:¹⁰¹

“I was returning from the fields. When I reached the place where Col Ademard and his men were, he told me to lie down on the ground. It was about 16.00 hours and I stayed there until his soldiers returned with about 15 people members of Kazadi’s movement. On the spot one of the people who was shouting about being tied up too tightly was shot dead. At about 19.00 hours Colonel Ademard ordered that we should be taken and executed at Nsensele. So it was that we were driven in a white pick up truck of Anvil Mining to the place of execution. Once we got to the place, we were made to go one by one in front to be shot. I was the third person and the bullets were fired at me but didn’t injure me, I didn’t understand, I fell down among the dead bodies that were there and the others were killed and fell on top of me. Afterwards they left. When I heard the vehicle and the two motor cycles leave I moved and I heard another person who had also not been hit and I helped untie him and we headed into the bush to hide.”

The witness confirmed the name of the other man who had escaped and told the prosecutor about the execution of a student at Nsensele who was shot protesting his innocence.¹⁰²

The defence lawyers claimed that only the bodies of people killed in clashes were buried at Nsensele. Some of the military defendants denied what they had said earlier in signed statements to the original prosecutor about being given orders to remove civilian prisoners and execute them at Nsensele.

The defence lawyers availed themselves of the President of the Court’s discretionary powers to call a number of new witnesses. Neither the prosecutor nor the victims’ lawyers had received prior notification that these new witnesses would be called.

The presence of Anvil Mining staff during the events in Kilwa

MONUC's final report refers not only to the FARDC's use of Anvil Mining's logistics and vehicles, but also of its personnel.¹⁰³ The indictment too refers not only to the matter of the provision of vehicles (charging that the three Anvil Mining employees "voluntarily failed to withdraw the vehicles placed at the disposal of the 62nd Brigade"), but also accuses the Anvil Mining employees of having "knowingly facilitated the commission of war crimes by Ilunga Ademar and his men".

MONUC refers to information in its possession 'according to which an international security officer of Anvil was also in the vehicles used by the army' adding that this 'was denied by Anvil.'¹⁰⁴ MONUC also states: 'MONUC was able to confirm that three drivers of the company Anvil Mining drove the vehicles used by the FARDC.'¹⁰⁵ In the *Four Corners* interview, when the interviewer suggests that the company's vehicles used by the FARDC were driven by 'Anvil staff presumably', Bill Turner responded: 'Oh rubbish, well here you go again, Anvil staff, well that would further implicate the company. Anvil people had nothing to do with the military activities in Kilwa other than helping the military get from New Pweto down to Kilwa, period.'¹⁰⁶

A witness who had been detained in Kilwa, at the Hotel Kabyata, the operational headquarters of Colonel Ademar, gave ACIDH the following statement about the presence of an Anvil Mining staff member on 16 October 2004 at about 7am:¹⁰⁷

'That was when Mr Cedric, head of Anvil Mining's security at the time, arrived on a motorbike from Dikulushi... While he was talking to Colonel Ademar, he [Ademar] asked him to provide some corn meal for his soldiers. Cedric told him that there was not much left, but that he would find him 60 bags of 25kilos.

About one hour later, at about 10am, a Magirus lorry loaded with bags of flour, escorted by an Isuzu pick-up truck belonging to Anvil, arrived on the scene. We five were ordered to unload the bags. We did it hurriedly. Afterwards, Ademar ordered that all the detainees should be put into the lorry and driven to Dikulushi from where, according to him, a plane would take them to Lubumbashi. No sooner said than done. But the lorry couldn't start, because the steering wheel had jammed. So it was the pick-up that was used to transport the detainees after a soldier took the wheel and four other soldiers got into the vehicle, followed by Mr Cedric on a motorbike...

A few moments later, Mr Cedric returned followed by the empty pick-up and told the Colonel that a serious accident had occurred at Nsensele (3 km from Kilwa on the road towards Dikulushi) and that all the detainees had died. They had been buried on the spot where the accident had happened.'

In an e-mail dated 29 September 2005, RAID asked Bill Turner about events described in the above eye-witness testimony.¹⁰⁸ In an e-mail response to RAID dated 30 September 2005, Bill Turner stated that 'Cedric was in South Africa on that day' (16 October 2004). In the *Four Corners* interview, conducted in May 2005, when asked how he learnt of events at Kilwa, Bill Turner referred to an employee named Cedric, who he described as 'one of our security people...in those situations the authority passes to the security person and it's up to the security person to sort of you know call the shots on what we do with people, where we move people and so on.'¹⁰⁹

When questioned by the military prosecutor about 'Mr Cedric', Pierre Mercier confirmed that he worked for Anvil Mining's Security Section. He also stated that Cedric was not at Dikulushi when Kilwa fell into (rebel) MRLK hands, but that he had arrived in Lubumbashi on 15 October 2004. He claimed that Cedric went to Kilwa for the first time with Mercier on the morning of Saturday 16 October 2004.¹¹⁰

A soldier, who had been stationed in Kilwa at the time the rebels came into the town, stated to the prosecutor that he and another soldier made their way to Dikulushi mine at 7am on 14 October 2004.¹¹¹ "With the assistance of Mr Cedric, head of Security at Anvil Mining, we managed to get in contact with the 6th Military Region by phone."

The differing accounts and contradictory testimony concerning the whereabouts and actions of Cedric on the dates in question were never clarified. Cedric himself has neither made a statement to the prosecutor nor appeared in court.

Anvil Mining has confirmed that discussions took place between company security personnel and the rebel leader in Kilwa on 14 October 2004.¹¹² Anvil Mining has also confirmed that it maintained security staff including the Group Security Manager and the Mining Manager on site in order to monitor the situation.¹¹³ Bill Turner stated that '[t]here would have been quite a lot of communication going on...the military wanting to find out from us what we knew of it [the uprising] and we were wanting to find out from them what sort of risk this posed for the mining operations'.¹¹⁴ Bill Turner also made reference to the presence of Congolese army intelligence personnel at the Dikulushi mine site: 'We have army intelligence on site, ANR, Army Intelligence is ANR. [*sic* – ANR is the civilian intelligence service] They're on site all the time.'¹¹⁵ He stated that Anvil Mining paid the ANR personnel a per diem.¹¹⁶ This suggests that the company and military were exchanging information about unfolding events and the security situation.

A military officer informant reported that during the incident, an ANR agent known as 'Aigle', who was stationed at Dikulushi and who worked with Cedric, together with the ANR Chef de Poste at Kilwa, known as 'Kembo', drove around in an Anvil Mining Land Cruiser. They allegedly kept in constant radio contact with Peter Van Niekerk. The ANR agents were never questioned about their role in events in Kilwa.¹¹⁷

27 May 2007: The two Anvil Mining employees were cross-examined and questioned about the circumstances in which the vehicles and two motorcycles belonging to Anvil Mining were used by the FARDC to transport looted goods (see text box *How Anvil Mining's vehicles were used*)

A debate ensued regarding a document produced by a witness concerning an agreement for an amicable settlement between the victims and Anvil Mining. One of the lawyers representing the Anvil Mining employees declared that the document had no legal validity.

The court went to the village of Nsensele where they were met by Madame Emele Kyomba Kalua, Traditional Chief. She told the court that two people from her village had been killed and that several bodies had been thrown into makeshift graves by the Red Cross. Madame Emele had previously made a statement to the prosecutor in October 2005.¹¹⁸

q. 3 What can you tell us about the events of October last year [2004]?

r. 3 At the time of the events we all abandoned the village of Nsensele and we took refuge in the bush near Kyaka, at Kilongoma village to be precise. After three days my husband and I decided to return to our village but when we arrived, it was horrible. We found many dead bodies, first at the place where gravel was taken and also at another spot not far away there were other bodies.

...

q. 5 Did you personally know anyone among the bodies?

r. 5 I recognised three people, among others Mulunakakwe Stanislas, Mr Musasina and a student called Kiyomba wa Kiwomiso. The other bodies were heaped together in another spot.

Mme Emele's mother told the court that she had witnessed the shooting of Stanislas Kabwebwe Kitanika by Colonel Ademar and another soldier. The victim's son testified how he had seen Colonel Ademar and another soldier shoot and stab his father.

The relatives of the victims were reported to have been shocked at attempts by the defence lawyers to minimise the number of deaths and to question whether the victims had ever existed.

At Kilwa, the court did not hear crucial evidence from key individuals, as not all the prosecution witnesses attended the hearings. Several witnesses and victims who were supposed to appear and were cited in the indictment did not receive a summons to appear in court. Among them was the Anvil Mining driver (who had driven the vehicle which had allegedly been used to transport bodies and looted goods) and Red Cross workers. According to information collected by the MONUC Division of Human Rights, other witnesses were afraid of reprisals and decided to hide, not to appear in court or to leave Kilwa to avoid having to testify.

The President of the Red Cross's Moero office, interviewed by the military prosecutor in October 2005, had confirmed that "in total, the Red Cross, which had not been requisitioned either by the State nor by the FARDC, provisionally registered 81 deaths."¹¹⁹ A report documenting these deaths had been handed to the prosecutor at the time. A local Red Cross worker, in his own testimony to the prosecutor in October 2005, stated that on the first day he had buried bodies at Nsensele, he had personally seen 48 corpses and was able to identify a number of victims among the dead, including his own son.¹²⁰

The impartiality of the presiding judge was called into question by MONUC trial observers. He was alleged to have harried some of the prosecution witnesses or refused to listen to them. The prosecutor objected to the unfair manner in which cross-examinations were conducted.¹²¹ He refused to call key prosecution witnesses cited by the victims' lawyers, including former Governor Urbain Kisula Ngoy. Court officials told a journalist who attended the hearings in Kilwa that his presence was unwelcome.

28 May 2007: When the court was in session in Kilwa, Moïse Katumbi, the Governor of Katanga Province who is a former business associate of Anvil Mining, visited Pweto to launch the refurbishment of the Kilwa-Kasomeno road, which Anvil Mining is carrying out. In his public address, the Governor told the local people not to discourage Anvil Mining, which was working for their benefit, by making 'gratuitous allegations' against the company.¹²² According to information received by ASADHO/Katanga, Governor Moïse Katumbi reportedly gave instructions to traditional chiefs to dissuade victims from participating in the trial.

V. CLOSING STAGES OF THE KILWA TRIAL¹²³

6 – 11 June 2007: The court reconvened in Lubumbashi. On 6 June, Maître Gabriel Mununga, a lawyer assigned by Avocats Sans Frontières to represent some of the victims, asked for the proceedings to be adjourned so that he could read the transcript of the Kilwa hearings which he had not attended. The request was rejected on the grounds that the victims' lawyers should have read the transcript in the two days following the return of the court to Lubumbashi (4 and 5 June).

Apart from Maître Mununga, none of the other lawyers representing the victims were initially present when the court first resumed hearings on 6 June. On 11 June the other lawyers representing the victims returned to the court. Maître Georges Kapiamba, one of the lawyers representing the victims, reiterated a request for victims present in Lubumbashi to testify in person at the trial and to allow their witnesses to testify too.

11 June 2007: A number of victims or families of victims testified in court.

Pierre Kunda Musopelo, a police officer who had been stationed in Kilwa for three years, described how he had been detained and severely tortured for three days in the Hotel Kabyata by the FARDC. He said 48 detainees were held in a very small room in stifling conditions. Kunda stated that many of the detainees died.¹²⁴

Lieutenant Lofete, who knew Kunda from the past, allowed him to go outside for fresh air, as long as his superior was not around. During these breaks, Kunda was able to see Anvil Mining employees, Peter and Cedric, coming to see Colonel Ademar. Kunda, who used to meet Cedric frequently in the course of his work, alleged that the Anvil Mining employees appeared at ease with Colonel Ademar and gave the impression that they had known each other for some time. (A senior Anvil Mining manager told RAID that Colonel Ademar was a frequent visitor to the Dikulushi mine and acknowledged that he

knew him well).¹²⁵ According to Kunda, Cedric was riding a motorcycle. Kunda stated that on two occasions, while he was detained in the Hotel Kabyata, Colonel Ademar came and took some of the detainees away to an unknown destination using Anvil Mining vehicles. On one of these occasions, Lieutenant Lofete told Kunda to pray because the other detainees were being taken to ‘the slaughterhouse’. Lofete later denied having said this. Previously, Kunda had told the prosecutor: “That same night 17 to 18 October, Colonel Ademar, Lt Lofete of Br [unreadable] and Lt Domi, Comd Cie (Company) and two ANR agents Emmanuel and Michel came and removed eight detainees whom they went to execute that night.”¹²⁶

Madame Monga, the wife of Pierre Kunda, stated that their daughter had died after being raped and sexually abused by Colonel Ademar’s men. The parents of two young men, 19-year old Ulimwengu Nombele Willy and 21-year old Ulimwengu Yuma Lukumani, told the court how their sons were killed by the FARDC.

14 June 2007: In their closing statements, the victims’ lawyers cited provisions of the Rome Statute of the International Criminal Court (ICC) in their attempt to establish the responsibility of the principal defendant, Colonel Ilunga Ademar, in his capacity as commanding officer, for war crimes committed by his men in Kilwa. The DRC ratified the Rome Statute in 2002 and, although it has not yet passed enabling legislation, there is a growing trend for Congolese military courts to apply directly the ICC’s rules of procedure and evidence and other provisions. The lawyers requested damages on the victims’ behalf ranging from \$10,000 to \$100,000. In direct application of the Rome Statute, the military prosecutor called for life imprisonment – and not the death penalty (as provided for in the Congolese Military Criminal Code) – for eight military defendants, including Colonel Ademar. The prosecutor called for one of the nine military defendants to be acquitted. He concluded that there was insufficient evidence to establish that Anvil Mining or its employees had participated in war crimes, so recommended that the three Anvil Mining employees be acquitted of the charge of complicity in war crimes in the absence of the element of intent.¹²⁷

18 June 2007: In their closing statements, lawyers representing the military defendants denied that summary executions had been carried out. They claimed that those killed had been ordinary victims of war and that the mass grave at Nsensele was in fact a cemetery. They referred to the absence of death certificates, contradictions in the testimonies given by the few eye-witnesses to these events and the fact that most other testimony was hearsay evidence. The defence lawyers questioned whether the victims had really given any lawyers instructions to represent them.¹²⁸

19 June 2007: The legal team representing the Anvil Mining employees, Pierre Mercier and Peter Van Niekerk (Cedric never appeared in court), also raised the question as to whether the victims had really given instructions to the lawyers to represent them.¹²⁹ However, more than 144 victims or plaintiffs have officially signed mandates appointing *Avocats sans frontières* or ASADHO to represent them.¹³⁰

The court retired to consider its verdict.

28 June 2007: The military court, in its verbal judgment, found all the defendants not guilty of war crimes or other crimes in relation to the Kilwa incident. The court referred to the fact that President Joseph Kabila gave orders to the Commander of the 6th military region “to do everything possible to retake Kilwa within 48 hours”.¹³¹ It took the view that no summary executions had occurred in Kilwa, but that people had been killed during “fierce” fighting between the rebels and the FARDC. The court criticised human rights organisations for “trying to turn a humanitarian issue into a judicial affair”.¹³² The court repeated its view that only a small number of victims had been constituted as *parties civiles* in the proceedings. Throughout the verdict, the court sought to dismiss or discredit the evidence of victims and their relatives.

Colonel Ademar, Captain Sadiaka Sapanda and two soldiers were found guilty on separate charges relating to the arbitrary detention and murder of two young men in Pweto in January 2005. Colonel Ademar and Captain Sadiaka were sentenced to life imprisonment for these crimes. They have lodged an appeal.

The military court found the company Anvil Mining not guilty, a decision welcomed by Anvil Mining in its reaction to the verdict.¹³³ However, at the start of the trial in December 2006, the prosecutor confirmed that it was only Anvil Mining’s agents, and not Anvil Mining the company, who were on trial on charges of aiding and abetting the military.¹³⁴ It is therefore unclear on what basis the court could have cleared the company.

The presiding judge has still not handed in the written judgment to the clerk’s office.

The prosecutor has lodged an appeal against the court’s decision to acquit the military accused of war crimes and other crimes during the operation to retake Kilwa in October 2004. The victims’ lawyers stated that their clients have also appealed the decision.

ASADHO/Katanga published a news release condemning the unfair decision of the military court of Katanga.¹³⁵

The proceedings went largely unreported in the DRC. According to journalists, the government put pressure on official media outlets not to cover the trial.

4 July 2007: Louise Arbour, the United Nations High Commissioner for Human Rights, issued a statement expressing her concern at the verdict to acquit all defendants, both military and civilian, in the Kilwa trial.¹³⁶ She also condemned the use of a military court to try civilians. The High Commissioner stated: “I am concerned at the court’s conclusions that the events in Kilwa were the accidental results of fighting, despite the presence at the trial of substantial eye-witness testimony and material evidence pointing to the commission of serious and deliberate human rights violations”.

¹ Anvil Mining Limited is incorporated in the Northwest Territories, Canada. Anvil Mining Limited is listed on both the Toronto Stock Exchange and the Australian Stock Exchange. Anvil Mining Limited, through its wholly owned subsidiaries Anvil Management NL (Australia) and Anvil Mining Holdings Limited (United Kingdom), has a 90% holding in Anvil Mining Congo SARL, which owns Dikulushi Mine.

² Anvil Mining Limited, 'Advice on rebel activity in village of Kilwa, DRC', Press release, 15 October 2004.

³ *Ibid.*

⁴ *Ibid.*

⁵ Two Kilwa radio operators have confirmed this information saying that they heard the message from Colonel Ademar being transmitted while in the bush. (ACIDH/RAID Joint report, "Kilwa A Year After the Massacre of October 2004", October 2005). Many witnesses later stated in court that they had fled out of fear of reprisals by the FARDC.

⁶ Different documents use different spellings for Colonel Ilunga Ademar's name: some refer to him as Ademar, others as Ademard, and others as Ademars.

⁷ MONUC Special Investigations Unit (SIU), 'Report of the Special Investigation in Kilwa 22-24 October 2004, Lubumbashi', 10 November 2004, paragraph 15 (hereafter 'MONUC Preliminary Report'). This was MONUC's preliminary report into the Kilwa incident. MONUC released its final report in September 2005.

⁸ Transcript of an audio recording by Radio Okapi of the judgment in the Kilwa trial, as read out in court on 28 June 2007 (English translation by RAID/Global Witness). See *intra*, under 28 June 2007 and note 131.

⁹ RAID interview with Pierre Mercier, Lubumbashi, 24 November 2004. According to the court, Mercier was accompanied by the Governor of Katanga and by the Commander of the 6th Military Region: see transcript of an audio recording by Radio Okapi of the judgment in the Kilwa trial, as read out in court on 28 June 2007 (English translation by RAID/Global Witness).

¹⁰ See *intra*, entry for 16 May 2007.

¹¹ Paragraph 17 of MONUC final report '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 le 15 octobre 2004' (hereafter 'the MONUC report'), released in September 2005. Despite the UN's failure to distribute the report and to provide an English translation (standard practice with all other MONUC human rights reports on the DRC), it is widely available on the Internet. See for example: http://abc.net.au/4corners/content/2005/MONUC_report_oct05.pdf. See also transcript of an audio recording by Radio Okapi of the judgment in the Kilwa trial, as read out in court on 28 June 2007 (English translation by RAID/Global Witness).

¹² Anvil Mining's press releases of 18 and 21 October 2004 do not refer to civilian deaths, summary executions or other human rights abuses in Kilwa during the incident. Anvil Mining's press release of 21 June 2005 states that 'Although at the time, Anvil had no knowledge of human rights abuses, we are now learning, it was a terrible event.' Although there was some communication between MONUC's human rights investigation team and Pierre Mercier in October/November 2004, Anvil Mining states that there was no contact between the company and MONUC until after an ABC television news team had visited Kilwa (see Anvil Mining Limited, 'Quarterly Activities Report To Australian Stock Exchange Limited For the Third Quarter ended September 30, 2005', 31 October 2005, p.3). In August 2005, during RAID's visit to Dikulushi, an Anvil Mining staff member was asked why the company had not informed the UN about the human rights abuses in Kilwa. He replied: 'We're not NGOs, we didn't know what to do.' Bill Turner, Anvil Mining's CEO had 'a long conversation' in July 2005 with the Canadian Embassy in Kinshasa about the Kilwa incident. E-mail from Canadian embassy staff to RAID, 8 August 2005.

¹³ The extracts are taken verbatim from the original English version of the MONUC preliminary report.

¹⁴ Augustin Katumba Mwanke, a close adviser to President Kabila, was included in the list of persons against whom the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo recommended a travel ban and financial restrictions (Final Report of the Panel of Experts, 16 October 2002, S/2002/1146). A document entitled 'An Assessment of the Political and Security Risks Relevant to the Proposed Development of the Dikulushi Project', by Anvil Mining NL, dated 28 August 2001, states on page 23: '[Katumba] now has increased political clout to influence the timely development of the project, which he has indicated he will use to support Anvil. He indicated during the meeting on 24 July that he would like to take the board position on

Anvil Mining Congo SARL being offered to the Government (one position out of five). Katumba also acts as Ministère de Portefeuille (though officially this ministry no longer exists), and is therefore responsible for the government's interests in commercial enterprise companies.'

¹⁵ RAID interviews with witnesses in Nsensele and Kilwa, 25 August 2005. See also MONUC report, paragraph 19.

¹⁶ See RAID, 'Report of a Visit to the Dikulushi Mine and Kilwa, 24 -25 August 2005', 5 October 2005. In their statements to the prosecutor, eight witnesses referred to not being allowed to hold funeral rights on behalf of the victims. The local bishop informed the human rights organisation ACIDH that on the first anniversary of the Kilwa massacre, the Catholic Church was prevented from holding a mass to commemorate those who had died. (E-mail ACIDH to RAID, "Réunion avec Monseigneur Fulgence Muteba," 25 October 2005).

¹⁷ MONUC Preliminary Report, paragraph 5.

¹⁸ MONUC Report, paragraph 37.

¹⁹ *Ibid.*, paragraph 44.

²⁰ MONUC Preliminary Report, paragraph 28.

²¹ MONUC Report, paragraph 24. Of the 73 confirmed victims, MONUC records that 11 drowned in the lake trying to flee from Kilwa; 34 bodies were allegedly found and buried by the inhabitants of Kilwa (among them were victims of summary executions, insurgents killed in armed confrontations with the FARDC, and civilians killed by stray bullets); and at least 28 people, suspected of supporting the insurgents, are believed to have been summarily executed. According to a report by the human rights organisation ASADHO/Katanga, 'there is a mass grave on the western side of the airstrip and two at Nsensele (at 3km from the town) at the spot where Anvil Mining's machinery used to take laterite to maintain the road'. ASADHO/Katanga, 'Report on human rights violations committed in Kilwa in the month of October 2004', January 2005, p.15.

²² The President of the Red Cross's Moero office handed the provisional Red Cross report on deaths during the Kilwa incident to the military prosecutor during his visit to Kilwa in October 2005. See *intra*, note 119.

²³ Sixteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2004/1034, 31 December 2004, paragraph 14.

²⁴ ASADHO/Katanga, 'Report on human rights violations committed in Kilwa in the month of October 2004', January 2005.

²⁵ Anvil Mining Limited, 'Report for Quarter ended December 31 2004'.

²⁶ ASADHO/Katanga, 'Les victimes de Kilwa réclament justice', Press release, 7 March 2005.

²⁷ Letter from Hubert Tshiswaka, Executive Director of ACIDH, to General Manager of Anvil Mining Limited, and press release: "Communiqué de presse no.005/ACIDH/02/05: ACIDH invite Anvil Mining Ltd à s'abstenir de faciliter les violations des Droits humains et l'intimidation de leurs défenseurs" (ACIDH asks Anvil Mining Ltd to abstain from facilitating human rights violations and intimidation of activists), 28 February 2005.

²⁸ *Four Corners* taped interview with Bill Turner, full transcript, May 2005. A shortened version was broadcast by ABC on 5 June 2005.

²⁹ MONUC Report, paragraph 36, verbatim extract (English translation by RAID/Global Witness).

³⁰ ASADHO/Katanga, 'Les crimes de guerre de Kilwa doivent être punis', Press release, 1 July 2005.

³¹ Hubert Tshiswaka, Letter to the Procureur de la République (prosecutor), 18 July 2005.

³² ASADHO/Katanga, 'La Population de Lubumbashi répond à l'appel de l'Attaché de Presse du Gouverneur du Katanga de s'en prendre aux biens et animateurs de l'ASADHO/Katanga', Urgent Action, 13 July 2005.

³³ RAID open letter to Bill Turner, CEO of Anvil Mining Limited, 15 July 2005 available at: http://raid-uk.org/docs/Anvil_Dikulushi/Open_Ltr_Anvil.pdf.

³⁴ Hubert Tshiswaka, Letter to the Procureur de la République, 18 July 2005. See also 'Les actes d'intimidations s'intensifient à l'égard des membres de l'ASADHO,' 13 July 2005, available at: http://www.fidh.org/article.php3?id_article=2562.

³⁵ RAID, 'Report of a Visit to the Dikulushi Mine and Kilwa, 24-25 August 2005', 5 October 2005.

³⁶ Letter No 10/0844/CAB/GP/KAT2005 from Urbain Kisula Ngoy, Governor of Katanga, to Anvil's General Manager, Lubumbashi, dated 11 June 2005. Both the French original and an English translation of this letter are posted on Anvil Mining's website <http://www.anvilmining.com>

³⁷ ASADHO/Katanga, Press release No 15/2005, 28 September 2005.

³⁸ Colonel Magistrat Eddy Nzabi Mbombo, Auditorat Militaire Supérieur du Katanga, "Rapport de mission d'enquête judiciaire effectuée à Kilwa", 20 October 2005.

³⁹ Internal MONUC report, 'Factsheet on the Ilwa Massacre Trial', 14 March 2007.

⁴⁰ RAID interview with Colonel Eddy Nzabi Mbombo, military prosecutor in Lubumbashi, February 2006.

⁴¹ Compliance Advisor Ombudsman, 'CAO Audit of MIGA's Due Diligence of the Dikulushi Copper-Silver Mining Project in The Democratic Republic of the Congo, Final Report', November 2005.

⁴² Office of the High Commissioner for Human Rights, 'High Commissioner for Human Rights Concerned at Kilwa Military Trial in the Democratic Republic of the Congo,' 4 July 2007, available at: <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/9828B052BBC32B08C125730E004019C4?opendocument>.

⁴³ Of the three, Pierre Mercier and Cedric Kirsten are no longer employees of Anvil Mining. Anvil Mining representatives in Lubumbashi told Global Witness that Peter Van Niekerk was still working for the company in the DRC in April 2007. For ease of reference, the three are referred to as "Anvil Mining employees" throughout this document.

⁴⁴ Décision de renvoi, Colonel Magistrat Eddy Nzabi Mbombo, Auditeur Militaire Supérieur près la Cour Militaire du Katanga, 12 October 2006.

⁴⁵ RAID et al., 'Proceedings of the Military Court of Katanga in the case of the Congolese Public Prosecutor and *Parties Civiles* versus Colonel Adémar ILUNGA and associates – Rôle Pénal 010/2006/RMP 0065/2005,' Legal Update No 2, available at: http://www.raid-uk.org/docs/Kilwa_Trial/Legal_Update_2.pdf.

⁴⁶ Anvil Mining Limited, <http://www.newswire.ca/en/releases/archive/October2006/18/c9424.html>.

⁴⁷ RAID et al., Legal Update No 2.

⁴⁸ Reported in ASADHO/Katanga, 'L'ASADHO/Katanga dénonce les pressions que la Présidence de la RDC exerce sur le Magistrat Militaire qui a inculpé Anvil Mining à Lubumbashi pour complicité des crimes de guerre commis à Kilwa', 24 October 2006.

⁴⁹ Global Witness et al., 'Military Prosecutor in Kilwa Trial Recalled to Kinshasa', Urgent Appeal, 26 October 2006. A six-monthly report by the Human Rights Division of MONUC also states: 'MONUC learned that the Military Prosecutor has been pressured to drop the charges brought against the Anvil Mining staff. MONUC deplors any interference and will take every opportunity to remind the relevant authorities of their responsibility to respect the independence of the judiciary.' See 'The human rights situation in the Democratic Republic of Congo (DRC) during the period of July to December 2006,' 8 February 2007.

⁵⁰ The information in this section is based on the following sources, unless otherwise indicated: official prosecution documents in the trial dossier; reports from lawyers representing the victims (*parties civiles*); trial observation reports by MONUC and by local human rights NGOs; journalist reports, including Radio Okapi and Agence France Presse (AFP).

⁵¹ Ademar testified in Swahili, his language of choice; the signed statement was translated into French at the time by an assistant to the prosecutor. Colonel Ademar confirmed the transcript in a statement the following day, 6 July 2005. These statements are part of the prosecution's trial dossier.

⁵² Colonel Ilunga Ademar, transcript of official statement to prosecutor Colonel Magistrat Eddy Nzabi Mbombo, 5 July 2005 (English translation by RAID/Global Witness). Verbatim extract:

Question 8:

Pouvez-vous nous décrire comment s'est déroulée l'opération de Kilwa ?

Réponse 8 :

Le 13 octobre 2004, à partir de Pweto, je recevrai un message en provenance de la 6 Rgn Mil [Région Militaire], me demandant de descendre à Kilwa, car il y avait des insurgés. Et moi de répondre que je n'avais pas de moyen de transport. Après le contact de la 6 Rgn Mil avec Anvil Mining, deux camions furent mis à notre disposition. Ceux-ci me permirent de prendre une compagnie, celle du Capt Koko, qui était à Pweto.

Puis, je demandai au Comd Bn de me renforcer avec une autre compagnie le lendemain.

Partis de Pweto vers 23 Heures, nous arriverons à 15 km de Kilwa, le lendemain vers 15 heures. C'est là que nous croiserons la population fuyant en provenance de Kilwa...

⁵³ Global Witness et al., 'Human Rights Groups Denounce Obstruction of Justice Following Transfer of Kilwa Trial's Military Prosecutor', Press release, 12 March 2007.

⁵⁴ MONUC report, paragraph 40.

⁵⁵ *Four Corners* interview with Bill Turner, full transcript, May 2005.

On pages 49 – 50:

Q So was it the army who asked for Anvil's assistance or was it Anvil who volunteered its assistance to the army?

B [Bill Turner] We would never volunteer assistance to any military activity anywhere. If we're asked by the legitimate government of the country to do something, we will look at it and if we can give them some assistance, we would, as we did with the vehicles providing a number of vehicles for the soldiers to go from Pweto and down to Kilwa and you know the road that goes down from where the military headquarters is in Pweto, that road goes within a couple of kilometres of the Dikulushi mine. Can you imagine us sitting there expecting the protection of the government? We've got all these vehicles there and these soldiers just making their 200 kilometre trip down to Kilwa to come and put our [pauses] a problem there with a group of rebels, could we just sit there and let these guys walk past [the] mine. I don't think so.

On page 58:

B [Bill Turner] ...this was a military action conducted by the legitimate army of the legitimate government of the country. We helped the military get to Kilwa and then we were gone, whatever they did there, that's an internal issue, it's got nothing to do with Anvil.

⁵⁶ Compliance Advisor Ombudsman, 'CAO Audit of MIGA's Due Diligence of the Dikulushi Copper-Silver Mining Project in The Democratic Republic of the Congo, Final Report', November 2005, pp.5 - 6.

⁵⁷ Anvil Mining Limited, 'Anvil Mining Limited Response to Television Report of June 6, 2005', Press Release, 7 June 2005.

⁵⁸ Anvil Mining Limited, 'Anvil Confirms Denial of Unfounded Allegations', Press Release, 21 June 2005.

⁵⁹ RAID, 'Report of a Visit to Dikulushi Mine, 24-25 August 2005', 5 October 2005.

⁶⁰ MONUC report, paragraph 39.

⁶¹ MONUC report, paragraph 40. According to MONUC, Anvil Mining explained the apparent contradiction between this report and what happened during the Kilwa incident, including the alleged requisitioning of its vehicles and staff, by saying that its own report was 'a dry response to compulsory reporting requirements of the financial markets. It was produced prior to us [Anvil] having an appreciation of the seriousness of these events and in no way reflects the deep sadness we feel following the deaths that occurred'. Anvil Mining letter to MONUC, dated 20 June 2005, cited in MONUC report, paragraph 40, footnote 15.

⁶² Letter No. 10/0844/CAB/GP/KAT2005 from Urbain Kisula Ngoy, the Governor of Katanga to Anvil's General Manager, Lubumbashi, dated 11 June 2005, stated: "I hereby confirm the instructions given by the Office of the Governor of Province to M. Pierre Mercier, the Representative of your company in Lubumbashi, on 14 October 2004... Your Representative was given firm instruction to place at the disposal of the elements of the 6th Military Region logistical means for the transport of troops from Lubumbashi and Pweto to Kilwa and also to the interior of Kilwa, as described in the official message No. 550/0350/BUR/AT/PTO/004 of 16 October 2004 from the Administrator of Pweto Territory". (English translation by Anvil Mining: see *intra*, note 36).

⁶³ The letter referred to is believed to be that dated 21 October 2004, No 10/No- 1337/CAB/GP/KAT/2004, from the Cabinet of the Governor of Katanga to the Republic of Zambia's Consulate General in Lubumbashi.

⁶⁴ The Mai Mai in Katanga are informal militias which were supported and armed by the government of former President Laurent Kabila to fight the Rwandan-backed rebel forces during the war (from 1998 to 2002). After the peace agreement, Mai Mai groups continued to operate in Katanga and have been responsible for numerous human rights abuses against the civilian population. The Mai Mai and their leaders are now being integrated into the national army.

⁶⁵ Colonel Ilunga Ademar, Captain Sadiaka Sampanda, Captain Kambaj Musans, Sub-Lieutenant Lofete Mongita, Sub-Lieutenant Muhindo Tase, Sub-Lieutenant Mwanza Wa Mwanza, Warrant Officer Ilunga Kashila, transcript of cross-examination by the prosecutor, 17 September 2006.

⁶⁶ During interviews with the military prosecutor, a number of soldiers confirmed that Colonel Ademar had given orders for the summary execution of detainees, which were carried out by Lieutenant John Mwelwa Sabata at Nsensele. See Colonel Ilunga Ademar et al, transcript of cross-examination by the prosecutor, 17 September 2006.

⁶⁷ MONUC Report, paragraphs 2, 3 and 11. RAID interview with Pierre Mercier, Lubumbashi, 24 November 2004.

⁶⁸ MONUC Preliminary Report, paragraph 15.

⁶⁹ See *intra*, under entries for 15 and 24 May 2004 and text box, *The presence of Anvil Mining staff during the events in Kilwa*.

⁷⁰ Croix Rouge, "Bref rapport sur le bilan des morts à Kilwa," 29 October 2004: « La tombe du long de la route (accident véhicule: 5 cadavres, hommes en uniforme). »

⁷¹ Transcript of an audio recording by Radio Okapi of the judgment in the Kilwa trial, as read out in court on 28 June 2007 (English translation by RAID/Global Witness).

⁷² Transcript of official statement by Pierre Mercier to prosecutor Col Eddy Nzabi Mbombo, dated 13 October 2006 (part of the official trial documents).

⁷³ Transcript of official statement by Pierre Mercier: Q. 3 « En votre qualité de Directeur Exécutif d'Anvil Mining à cette époque-là, comment aviez-vous géré la situation d'insurrection survenue à Kilwa du 13 au 16 octobre 2004? »

R.3 « Alors que je me trouvais à Kinshasa... j'ai reçu un coup de fil d'un agent de la société m'informant que Kilwa était tombé entre les mains des rebelles. »

⁷⁴ In their statements to the prosecutor, two other Anvil employees – Peter Van Niekerk and Denholm Vickers (the latter had only recently been appointed General Manager, replacing Pierre Mercier) – refer to the town's importance to the company. They explained that the company depended on Kilwa and its port for exporting ore and for importing or obtaining all of the supplies and provisions necessary to operate the Dikulushi mine. 350 of the company's workers lived in Kilwa.

⁷⁵ In his statement to the prosecutor, Mercier said: R. 4 « Vu ce que cette cité représente pour Anvil Mining, j'ai tout de suite appelé le patron de l'ANR à Kinshasa et le Comd. 6Rgn Mil pour leur demander s'ils avaient les informations sur cette insurrection. » (English translation by RAID/Global Witness).

⁷⁶ *Ibid.*, R. 4: « Après études de faisabilité par le dernier cité (Demoura) et l'assurance donnée par le Comd 6 Rgn Mil sur le bon état de la piste, Jose Demoura me répondra qu'on pouvait utiliser un Hawker Siddley 748 (H5), qui ne pouvait décoller qu'avec 25 personnes au maximum.

Après un petit calcul, nous avons estimé que trois vols nous suffisaient pour évacuer tout le monde. Entre temps le Gouverneur de Province m'a appelé pour m'adresser une demande qui était plus un ordre, de fournir les moyens logistiques aux FARDC pour leur permettre de reprendre Kilwa.

Lui ayant demandé de m'adresser une demande écrite, il m'a répondu que le document suivra.

Comme les avions devaient décoller à vide de L'SHI [Lubumbashi] pour Dubiye, j'ai demandé à Mr Demoura s'il pouvait transporter les militaires. Il m'a répondu qu'il pouvait prendre 50 militaires par vol ; c'est ce qui a été fait.

N'étant pas sur le site j'ignore ce qui s'est passé en ce qui concerne les véhicules. C'est plus Peter qui peut vous fournir de plus amples renseignements à ce sujet. »

⁷⁷ *Ibid.*, R. 5: « Je n'ai aucune idée, mais je sais seulement qu'il y a eu des véhicules réquisitionnés. Si c'est avec ou sans chauffeurs, je n'en sais rien. »

⁷⁸ *Ibid.*, R. 9: « Ce n'est pas moi qui gèrais la crise sur place. »

⁷⁹ *Ibid.*, Q. 10: « Savez-vous que ce sont les véhicules d'Anvil Mining qui servaient au transport des personnes civiles qu'on allait exécuter au village Sensele à cinq kilomètres de Kilwa? »

R10. Je n'en sais rien. »

⁸⁰ *Ibid.*, R11. « C'est après la descente des autorités venues de Kinshasa et Lubumbashi à Kilwa qu'il nous avait été autorisé de reprendre nos activités.

Enfin, j'insiste que les véhicules mis à la disposition des FARDC avaient été réquisitionnés par le Gouverneur. »

Note d'OMP : après lecture le comparant objecte avoir déclaré : « Enfin, que les véhicules mis à la disposition des FARDC avaient été réquisitionnés par le Gouverneur. »

⁸¹ Proceedings in court, 16 May 2007. See also MONUC Lubumbashi, 'Rapport de l'observation des audiences foraines, Kilwa et Pweto 23 mai au 2 juin 2007'.

⁸² See *intra*, under entry for 27 December 2006 and note 52.

⁸³ Colonel Ilunga Ademar et al, transcript of cross-examination by the prosecutor, 17 September 2006: « Après le transport des troupes, la société a repris les deux camions pour nous laisser deux jeeps. »

⁸⁴ MONUC Lubumbashi, 'Rapport de l'observation des audiences foraines, Kilwa et Pweto 23 mai au 2 juin 2007'.

⁸⁵ Sub Lieutenant Muhindo Tase, transcript of statement to prosecutor, 15 October 2005 (English translation by RAID/Global Witness). « Le 15 Octobre 2004, déguisés en travailleurs Anvil Mining, nous

avons tenté de retourner à Kilwa en vue d'y rechercher des renseignements à fournir à Lubumbashi : Mais en arrivant au village Shula situé à 7km de Kilwa, nous y avons trouvé deux insurgés qui se sont mis à tirer en l'air à notre vue.

Ayant pris peur, le chauffeur a décidé de nous ramener à Dikulushi. C'est finalement le 16 octobre 2004 que nous sommes revenus à Kilwa déjà reprise par les troupes du Colonel Ilunga Ademar. »

⁸⁶ ACIDH & RAID, "Joint Report on Kilwa: a year after the massacre of October 2004", October 2005, footnote 25.

⁸⁷ Colonel Ilunga Ademar, transcript of official statement to prosecutor, 10 July 2005. The original French reads: « Réponse 9: En ce qui me concerne, une semaine après la reprise de Kilwa, la société précitée [Anvil Mining] m'avait logé dans son Guest House situé à côté du port et mis à ma disposition un véhicule de marque Hilux pour entrer en liaison avec les responsables de la société résidant à Dikulushi située à 50 kms de Kilwa. »

⁸⁸ Transcript of an audio recording by Radio Okapi of the judgment in the Kilwa trial, as read out in court on 28 June 2007 (English translation by RAID/Global Witness): "La 62eme Brigade garda les véhicules requisitionnés pendant deux semaines, le temps exigé pour la consolidation de la paix à Kilwa."

⁸⁹ See *intra*, under entry for 24 May 2007.

⁹⁰ See *intra*, under entry for 24 May 2007 and note 101.

⁹¹ See *intra*, text-box 'The presence of Anvil Mining staff during the events in Kilwa.'

⁹² Sub Lieutenant Muhindo Tase, transcript of statement to prosecutor, 15 October 2005 (English translation by RAID/Global Witness): « A la même date, après qu'il ait ordonné mon désarmement, le Colonel précité m'a confié avec feu le Capt Shabani, le Lt Mwelwa John, Adjt S2 62 Bde Inf la mission d'aller au village Nsensele exécuter des détenus dont j'ignore le nombre. Mais malheureusement, le Lt John Mwelwa qui conduisait la Jeep Land Cruiser nous a fait faire un tonneau... l'une des victimes en l'occurrence le Capt Shabani, S3 62 Bde Inf est mort. »

⁹³ MONUC Lubumbashi, 'Rapport de l'observation des audiences foraines, Kilwa et Pweto 23 mai au 2 juin 2007'.

⁹⁴ *Ibid.*

⁹⁵ MONUC report, paragraph 36.

⁹⁶ « R 9. Les militaires se déplaçaient à bord d'une camionnette de la sté Anvil Mining et on a pris une équipe d'environ huit secouristes pour cette opération d'évacuation et enterrement des cadavres. » Jean Denis Kalenga Ntanda, Congolese Red Cross, statement to Sgt Magistrat Dieudonné Kigoma Kanyereri, 14 October 2005 (English translation by RAID/Global Witness). See *intra*, note 120.

⁹⁷ See ACIDH, 'ACIDH invite Anvil Mining Ltd à s'abstenir de faciliter les violations des droits humains et l'intimidation de leurs défenseurs', Press release No 005/ACIDH/02/05, 28 February 2005. ACIDH notes in a footnote: "A source stated that the military used the vehicles and heavy machinery." (« La source de ACIDH affirme que les militaires avaient utilisé les véhicules et les engins. »).

⁹⁸ LICOF, ORMES, AAM, AJAC, 'Transcript of video interviews of Traditional Leaders in Kilwa Region conducted by Lubumbashi NGOs,' 23 July 2005, p.2 (English translation by LICOF at al). When it was put to Bill Turner by journalist Sally Neighbour that the *Four Corners* team had been told that Anvil Mining machinery had been used to dig the mass graves, he replied: "Really. Well that's surprising. You know how long it takes an excavator to get 54 kilometres down the road? It takes a long time and it is something we would not do and if you think anyone at the mine site would allow an excavator to go from the mine site 54 kilometres to Kilwa to go and dig a mass grave, you've got to be less of a journalist than I thought you might be." *Four Corners* taped interview with Bill Turner, full transcript, p.63.

⁹⁹ The information in this section is based on the following sources, unless otherwise indicated: official prosecution documents in the trial dossier; reports from lawyers representing the victims (*parties civiles*); trial observation reports by MONUC (in particular, MONUC Lubumbashi, 'Rapport de l'observation des audiences foraines, Kilwa et Pweto 23 mai-2 juin 2007') and by local human rights NGOs (who recorded the hearings); journalist reports, including Radio Okapi and AFP.

¹⁰⁰ Personal communication with MONUC sources, 1 June 2007.

¹⁰¹ Musinge Samba, transcript of statement to the prosecutor, 13 October 2005 (English translation by RAID/Global Witness): « Je revenais des champs. Arrivé à l'endroit où se trouvait le Col Ademard et ses hommes il m'a appelé lui-même et il m'a demandé de me mettre par terre. C'était vers 16h00 et je suis resté là jusqu'au moment où ses militaires sont revenus avec 15 personnes membres du mouvement Kazadi. Sur place une des personnes qui criait pour avoir été ligotée sévèrement fut tuée sur place.

Vers 19h00 le Col Ademard a ordonné que l'on aille nous exécuter à Nsensele. C'est ainsi que nous fûmes conduit dans une camionnette blanche de la Sté Anvil Mining vers le lieu d'exécution.

Arrivés sur le lieu, ils nous firent passer un à un devant pour tirer sur nous. Moi j'étais la troisième personne et des balles furent tirées sur moi sans me blesser, je n'ai pas compris, je suis tombé sur les autres cadavres qui s'y trouvaient et les autres furent tués et sont tombés sur moi. Après, ils sont partis. Lorsque j'ai entendu le véhicule et les deux motos partir j'ai bougé et j'ai entendu une autre personne qui n'avait pas aussi été atteinte et je l'ai aidée pour délier ses liens et nous avons pris le chemin de la brousse pour nous cacher. »

¹⁰² *Ibid.* In R. 3, the witness gives the name of the escapee as "Dirango, now he lives at Lukonzolwa." In R. 4, he describes the death of the student, Charles Mitonga. The witness later informed Charles Mitonga's family of his death.

¹⁰³ MONUC report, paragraph 39.

¹⁰⁴ *Ibid.*, footnote 9.

¹⁰⁵ *Ibid.*, paragraph 36.

¹⁰⁶ *Four Corners* taped interview with Bill Turner, full transcript, p.62.

¹⁰⁷ Eye-witness statement taken by ACIDH in its field visit to Kilwa and the surrounding area in September 2005, reproduced in: ACIDH & RAID, "Joint Report on Kilwa: a year after the massacre of October 2004", October 2005 (English translation of French original), p.2: « C'est alors qu'arrive à moto monsieur Cédric, responsable à l'époque de la sécurité de Anvil Mining, en provenance de Dikulushi. (...) Alors qu'il s'entretenait avec le Colonel Adémar, celui-ci lui demande une aide en farine de maïs pour ses soldats. Cédric lui répond qu'il n'a plus grand-chose mais qu'il va lui trouver soixante sacs de 25 kilos. Environ une heure après, vers 10 heures, un camion de marque Magirus chargé de sacs de farine, escorté d'une camionnette de marque Isuzu appartenant à Anvil, arrive sur les lieux. Il est ordonné à nous cinq de décharger la cargaison. Ce que nous faisons avec empressement. Après, Adémar a ensuite ordonné que tous les détenus fussent embarqués dans le camion et conduits à Dikulushi où, selon lui, un avion les amènera à Lubumbashi. Sitôt dit, sitôt fait ; mais le camion n'arrive pas à se déplacer à cause du blocage de la barre de direction. C'est la camionnette qui va servir pour transporter les détenus, après qu'un soldat en ait pris la conduite et quatre autres soldats soient montés à bord, suivie par monsieur Cédric à moto. (...) Quelques instants, monsieur Cédric rentre suivi de la camionnette vide de ses occupants et annonce au Colonel qu'un accident grave vient de se produire à Nsensele (à 3 km de Kilwa vers Dikulushi) et tous les détenus viennent de mourir. Ils ont été enterrés sur le lieu même de l'accident. »

¹⁰⁸ E-mail from RAID to Bill Turner, 29 September 2005.

¹⁰⁹ *Four Corners* taped interview with Bill Turner, full transcript, p.48.

¹¹⁰ Pierre Mercier, transcript of official statement to prosecutor Col. Eddy Nzabi Mbombo, dated 13 October 2006 (English translation by RAID/Global Witness):

Q. 6 « Connaissez-vous Mr Cedric? Qui était-il à Anvil Mining ? »

R. 6 « Oui, il travaillait au Service de Sécurité. » ...

Q. 8 « Etait-il à Dikulushi quand Kilwa était tombé aux mains du MRLK ? »

R.8 « Il n'était pas là. Il est arrivé à Lubumbashi, d'Afrique du Sud le vendredi 15 octobre 2004. A la même date, la cité de Kilwa ayant été reprise à 18 heures, le Directeur de Mines Mr Ken Norris a décidé que tous ceux qui avaient été évacués de Dikulushi puissent rentrer afin de reprendre le travail.

Mais pour raison de sécurité, nous avons de concert décidé d'y aller avec Cedric le samedi 16/10/2004 au matin. C'était la première fois que Cedric arrivait à Kilwa. »

¹¹¹ Sub Lieutenant Muhindo Tase, transcript of statement to prosecutor, 15 October 2005 (English translation by RAID/Global Witness): « Avec le concours de Monsieur Cedric chargé de Sécurité à Anvil Mining, nous sommes parvenus à entrer en contact, par phonie, en communication avec l'EM 6Rgn Mil. »

¹¹² Anvil Mining Limited, 'Advice on rebel activity in village of Kilwa, DRC', Press release, 15 October 2004. Bill Turner, in the *Four Corners* interview, also confirmed that '[w]e then had our security guys go down and talk to the rebel leader'. *Four Corners* taped interview, full transcript, p.43; also pp. 45 - 46.

¹¹³ Anvil Mining Limited, 'Advice on rebel activity in village of Kilwa, DRC', Press release, 15 October 2004. Bill Turner, in the *Four Corners* interview, also confirmed that security personnel were left behind to 'in order to monitor the situation' (p.49).

¹¹⁴ *Four Corners* taped interview with Bill Turner, full transcript, p.49.

¹¹⁵ *Ibid.*, p.20.

¹¹⁶ *Ibid.*, p.19.

¹¹⁷ Hubert Tshiswaka, ACIDH, Mémorandum à Monsieur l’Auditeur Supérieur de la Justice Militaire de Lubumbashi, 24 février 2006.

¹¹⁸ Transcript of official statement by Emele Kyomba Kalua, Traditional Chief of Nsensele, dated 13 October 2005, taken by assistant military prosecutor, Dieudonne Kigona Kanyereri. (English translation by RAID/Global Witness):

« q. 3 Que pouvez-vous nous dire à propos des événements de l’année passée [2004] en octobre ?

r. 3 Lors des événements nous avons tous quitté le village Nsensele et nous nous sommes réfugiés dans les champs dans le groupement Kyaka, précisément au village Kilongoma. Après trois jours, nous avons moi et mon mari décidé de rentrer au village mais à notre arrivée, c’était horrible. Nous avons trouvé beaucoup de cadavres d’abord à l’endroit où on avait pris le gravier et aussi [à] un autre endroit non loin, il y avait des cadavres.

q. 5 Avez-vous personnellement reconnu certaines personnes parmi ces cadavres ?

r. 5 J’ai reconnu trois personnes, entre autres M. Mutunakakwe Stanislas et M. Musasina et un élève du nom de Kiyombo wa Kiyomiso et les autres cadavres étaient entassés en un seul lieu. »

¹¹⁹ Statement of Ngoy Mangazini, President of the Red Cross, Secteur Moero, 13 October 2005, taken by Col. Eddy Nzabi Mbombo, during his investigation in Kilwa. (English translation by RAID/Global Witness). The original French reads: « Au total, la Croix-Rouge, qui n’a été réquisitionnée ni par l’Etat ni par les FARDC, a enregistré provisoirement 81 morts. »

¹²⁰ Jean Denis Kalenga Ntanda, Congolese Red Cross, statement to Sgt Magistrat Dieudonne Kigoma Kanyereri, 14 October 2005. The witness had responded to an appeal to all Red Cross workers to help remove the dead bodies from Kilwa and bury them. At the time of the Kilwa incident, on 14 October 2004, hearing shots, he decided to flee the town with his family. His 20-year-old son, Mutungana Katondo, had forgotten something and returned to Kilwa, where he was killed when Colonel Ademar entered the town. His father later found his son’s dead body when he was burying bodies at Nsensele.

« R 4: En date du 14 octobre 2004, pendant la nuit nous avons entendu des coups de balle... Comme nous avons eu peur, j’ai demandé à tous les miens de faire les bagages et récupérer le nécessaire pour fuir. En sortant, mon fils a dit qu’il avait oublié ses pantalons et il est revenu en arrière pour récupérer ses effets. Comme nous nous étions en avance nous sommes partis sans [...*illegible*] il s’est croisé avec eux et ils l’ont arrêté et l’ont conduit à Nsensele où ils l’ont fusillé.

Q. 5 Qui vous a apporté la nouvelle du décès de votre fils?

R 5. Moi même j’ai vu son corps lorsque nous étions en train d’enterrer les morts à Nsensele. »

See *intra*, note 96.

¹²¹ MONUC Lubumbashi, ‘Rapport de l’observation des audiences foraines, Kilwa et Pweto, 23 mai-2 juin 2007’.

¹²² MONUC sources, 1 June 2007.

¹²³ The information in this section is based on the following sources, unless otherwise indicated: trial observation reports by MONUC and by local human rights NGOs; journalist reports and UN-run Radio Okapi recordings of the hearings.

¹²⁴ *Four Corners*, transcript of interview with Pierre Kunda Musopelo, Police Commander (original French – English translation by *Four Corners*).

¹²⁵ Conversation with Mike O’Sullivan, Anvil Mining’s Vice President for Development and the Dikulushi Mine Site Manager, during RAID’s visit to Dikulushi, 24 August 2005.

¹²⁶ Pierre Kunda Musopelo, transcript of statement to the prosecutor, 5 November 2005 (English translation by RAID/Global Witness): « Cette même nuit 17 au 18 Octobre le Col Ademar, Lt Lofete du Br [*illegible*] et Lt Domi, Comd Cie et 2 agents ANR Emmanuel et Michel, sont venus extraire 8 détenus qu’ils sont allés exécuter cette nuit. »

¹²⁷ MONUC Lubumbashi, Human Rights Division, Daily Report, 14 June 2007.

¹²⁸ *Ibid.*

¹²⁹ MONUC Kinshasa, internal report, 20 June 2007.

¹³⁰ RAID has copies of ASADHO/Katanga’s instructions signed by 60 victims or plaintiffs. The ASF lawyers obtained their instructions when they accompanied the Military Prosecutor to Kilwa in October 2005. The ASF lawyer read out the names of the 60 people he represented at the trial (see *intra*, entry for 6 June 2007). Therefore, in total, the victims’ lawyers (ASADHO and ASF) have instructions from 120

plaintiffs.

¹³¹ Transcript of an audio recording by Radio Okapi of the judgment in the Kilwa trial, as read out in court on 28 June 2007 (English translation by RAID/Global Witness): « Le Président de la République ordonna au Commandant de la 6eme Région Militaire de tout faire pour reprendre Kilwa dans 48 heures. »

¹³² *Ibid*: « ...tenter de transformer un dossier humanitaire en dossier judiciaire. »

¹³³ Anvil Mining Limited, “Anvil and its Employees Acquitted in Kilwa Incident,” press release, 28 June 2007, available at:

<http://www.anvilmining.com/documents/070628NewsReleaseMilitaryCourtAnnouncement.pdf>.

¹³⁴ ACIDH, ASADHO/Katanga, RAID et al, ‘Proceedings of the Military Court of Katanga in the case of the Congolese Public Prosecutor and *Parties Civiles* versus Colonel Adémar Ilunga and associates – Rôle Pénal 010/2006/ RMP 0065/2005,’ Legal Update No.2, Lubumbashi, 27 December 2006. Available at:

http://www.raid-uk.org/docs/Kilwa_Trial/Legal_Update_2.pdf.

¹³⁵ ASADHO/Katanga, ‘L’ ASADHO/Katanga dénonce la décision inique que la Cour militaire du Katanga vient de rendre dans l’affaire des crimes de guerre commis à Kilwa’ (ASADHO/Katanga denounces the iniquitous decision handed down by the military court of Katanga in the case of war crimes committed in Kilwa), Press release no.005/2007, 28 June 2007.

¹³⁶ Office of the High Commissioner for Human Rights, ‘High Commissioner for Human Rights Concerned at Kilwa Military Trial in the Democratic Republic of the Congo,’ 4 July 2007, available at:

<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/9828B052BBC32B08C125730E004019C4?opendocument>.