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



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URGENT APPEAL

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Military Prosecutor in Kilwa Trial Recalled to Kinshasa: Political Pressure Intensifies After Former Anvil Mining Staff and Congolesse Military Charged with Commission of or Complicity in War Crimes

26 October 2006

The non-governmental organisations Action contre l'impunité pour les droits humains (ACIDH), Rights and Accountability in Development (RAID) and Global Witness today condemned political interference in the Kilwa trial and appealed to President Joseph Kabila to demonstrate his determination to defend the rule of the law in the Democratic Republic of Congo (DRC). The NGOs expressed concern that Colonel Eddy Nzabi Mbombo, a military prosecutor at Katanga's Military Court (*Auditeur Militaire Supérieur près la Cour Militaire du Katanga*), may be coming under intense political pressure following his decision to commit three former employees of Anvil Mining Congo and nine members of the Congolesse army for trial for the commission of or complicity in war crimes.

In October 2004, after the town of Kilwa had been briefly occupied by a hitherto unknown and ill-prepared rebel movement calling itself the Revolutionary Movement for the Liberation of Katanga (*Mouvement Révolutionnaire pour la Libération du Katanga*, MRLK), soldiers of the 62nd Infantry Brigade of the Congolesse Armed Forces (*Forces armées de la République démocratique du Congo*, FARDC), under the command of Colonel Ilunga Ademar, launched a counter-offensive to recapture the town in southern DRC. In the course of the counter-offensive, serious human rights violations were perpetrated against the civilian population.

The indictment¹ names three former Anvil Mining employees: Pierre Mercier, a Canadian national who was the General Manager of Anvil's Congolesse subsidiary, Anvil Mining Congo, and the Deputy General Manager of the Perth-based company,

¹ Décision de renvoi, Colonel Magistrat Eddy Nzabi Mbombo, Auditeur Militaire Supérieur près la Cour Militaire du Katanga, dated 12 October 2006. The indictment charges Colonel Ilunga Ademar and eight other soldiers on various charges 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.

Anvil Mining NL; Peter Van Niekerk, a South African national, Anvil's former head of Security at the Dikulushi mine; and another South African national identified only as Cedric (believed to be Cedric Kirsten, Anvil's former Security Manager at Dikulushi, although Anvil 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".² The most serious crime, which was carried out by the Congolese Armed Forces, was the summary execution of twenty men and five women, none of whom, according to the indictment, had taken part in the small-scale rebellion that was the justification for the military's counter-offensive. 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."³

For months the Congolese authorities obstructed all attempts to investigate the incident. Nevertheless, investigators from the United Nations peacekeeping operation in the DRC, MONUC, conducted an inquiry. Their report described how soldiers of the 62nd Brigade carried out summary executions, arbitrary detentions, torture, rape and looting on the defenceless civilian population of Kilwa.⁴

ACIDH, RAID and Global Witness are also calling on Bill Turner, the Chief Executive of Anvil Mining, who paid a visit to the DRC shortly after the military prosecutor's decision was made public, to cooperate fully with the Congolese judicial authorities in their search to establish the truth about the precise circumstances in which Anvil's logistical support was provided to the 62nd Military Brigade which facilitated the human rights violations.

Anvil Mining, which has enjoyed the support of Augustin Katumba Mwanke, an influential figure in President Kabila's party, the *Parti du peuple pour la reconstruction et la démocratie* (PPRD) and an adviser to President Kabila, who was also on the board of Anvil Mining Congo, failed to make clear in its quarterly reports to the Australian and Toronto stock exchanges the scale and gravity of the human rights violations that had occurred in Kilwa in October 2004. In June 2005, Australian television's flagship current affairs programme, Four Corners, broadcast a documentary, "The Kilwa incident", which prompted Colonel Nzabi, with help from MONUC's Human Rights Division, to conduct an *in situ* investigation at Kilwa. Despite a singular lack of cooperation from the 6th Military Region, the prosecutor managed to gather sufficient evidence from a range of sources to identify the alleged principal authors. On 12 October 2006 he notified the Military Court of Katanga of

² The indictment related to the former Anvil Mining employees reads as follows (verbatim French text): "Avoir, comme auteurs, coauteurs ou complices selon l'un des modes de participation criminelle prévus par les articles 5 et 6 du Code Pénal Militaire ; ...en omettant volontairement de retirer les véhicules mis à la disposition de la 62^{ème} Brigade D'Infanterie dans le cadre de la contre-attaque lancée du 15 au 18 Octobre 2004 pour reprendre la Cité de Kilwa tombée deux jours auparavant aux mains du Mouvement Révolutionnaire pour la libération du Katanga ; MLRK en sigle ; avec connaissance, facilité la commission par le Prévenu Ilunga Ademar et ses hommes des infractions ci-après non justifiées par les lois et coutumes de la guerre..." » Décision de renvoi, pp8-9.

³ Anvil Mining Limited: <http://www.newswire.ca/en/releases/archive/October2006/18/c9424.html>

⁴ MONUC, "Rapport sur les conclusions de l'Enquête Spéciale sur les allégations d'exécutions sommaires et autres violations de droits de l'homme commises par les FARDC à Kilwa (Province de Katanga) le 15 octobre 2004, Kinshasa", undated, released to RAID on 23 September 2005. (The unauthorised translation is by RAID.) Hereafter, "MONUC report".

his decision to commit for trial nine members of the Congolese Armed Forces and three former employees of Anvil Mining Congo (the Congolese subsidiary of the Australian-Canadian mining company).

The NGOs deplore the fact that while the decision of the Katangan military prosecutor has been hailed by international observers as a milestone towards an end to impunity in the DRC and a critical step towards bringing justice to the people of Kilwa, intense political pressure may be brought to bear on the prosecutor, apparently with a view to obstructing prosecution. It is reliably reported that a few days after the indictment was released, Colonel Nzabi was summoned urgently to Kinshasa where he remains. It is not the first time that pressure has been brought to bear on the military judicial authorities to drop prosecutions of members of the Congolese Armed Forces accused of human rights violations.

In the DRC, a case in which military personnel and civilians are implicated would come before a civilian judge. However, at the present time, only the Congolese military penal code incriminates war crimes and crimes against humanity and it is therefore the military courts which have jurisdiction in these cases.

ACIDH, RAID and Global Witness are calling upon individuals, lawyers' groups and NGOs who are working for the establishment of the rule of the law in the DRC and for an end to impunity to send messages to the following:

- *President Joseph Kabila, a candidate in the second round of the DRC's presidential elections scheduled for 29 October 2006:*
 - i) *Calling upon him to use this opportunity to demonstrate his willingness to defend the rule of law in the DRC;*
 - ii) *Respectfully reminding him that in the lead-up to presidential elections, the eyes of the Congolese people and the international community will be on him and expecting him to take appropriate steps against anyone who seeks to pervert the course of justice;*
 - iii) *Assuring him that by taking such action, he will demonstrate his determination to put an end to impunity.*

Son Excellence Joseph Kabila,
Président de la République,
Palais de la Nation,
Kinshasa-Ngaliema,
République Démocratique du Congo
E-mail: presipp@yahoo.fr

- *Bill Turner, Chief Executive of Anvil Mining, calling on the company:*
 - i) *To cooperate fully with the Congolese judicial authorities in their search to establish the truth about the Kilwa incident and to bring those responsible to justice;*
 - ii) *To provide the military prosecutor (Auditeur Militaire Supérieur) with the full name and contact details of Cedric, Anvil's former Security Manager who is one of the accused, so that he can provide a statement.*

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▪ *Military Judicial Authorities in Kinshasa:*

- i) *Calling on the court to resist pressures, threats and political interference, wherever they may originate from;*
- ii) *Expressing confidence that the court will carry out its duty in accordance with the law and international standards for a fair trial and encouraging it to do so.*

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