ACIDH
Action **C**ontre l'**I**mpunité pour
les **D**roits **H**umains
Action against impunity for human rights
Avenue Des Usines N°317/Coin avenue Kasavubu
Commune de Lubumbashi – R.D.C.
Tél : 0024397108022 et 00 243 970 11 202
E-mail : acidhrdc@ic-lubum.cd

RAID
***R**ights & **A**ccountability*
*in **D**evelopment*
PO Box 574, Oxford, OX2 8ZU
Royaume Uni
Tél. (44) 1865 436 245
Fax: (44) 1865 270 721
E-mail: raid.oxford@ntlworld.com

JOINT REPORT
On

KILWA

A Year after the Massacre of October 2004

DEMOCRATIC REPUBLIC OF CONGO

ACIDH - RAID, October 2005

(English translation of French original)

Prologue

It was 16 October 2004 at about 7 am.... We were lying on the ground on our backs, me and my four companions of misfortune, among a dozen other people who had been captured, tied up, and literally beaten by soldiers at the Hotel Kabyata, operational headquarters of Col. Ademar Ilunga Kote Kubaya. The person closest to me was bleeding from the nose, and I myself had been kicked in the head.

Col. Ademar and the head of the ANR (Agence Nationale de Renseignements – National Intelligence Agency) post turned up. We reminded the latter that he had personally given his orders that people who had fled might return to their homes. The ANR chief untied us, but did not let us go.

That is when Monsieur Cedric, head of Anvil Mining's security, arrived on a motor bike from Dikulushi. Then he had a conversation with Ademar, who asked him to provide some corn meal. Cedric told him that there was not much left, but he said he would find 60 25-kilo bags.

About one hour later, at about 10 o'clock, a lorry (a Magirus make) loaded with bags of flour, escorted by an Isuzu pick up belonging to Anvil arrived. 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 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, accompanied by four other soldiers. Monsieur Cedric followed on the motorbike.

A few moments later, Monsieur 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 all the detainees had been killed. They had been buried on the spot where the accident had happened.

When I was returning to my house, my head empty, I thought I would go and check if the old lady that lived opposite me had survived. There was a bullet hole in her forehead, which had blown away her brain, while another bullet had pierced her hips...

Eye witness statement (identity withheld)

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Recommendations

1. To the Congolese Government

- To give survivors access to justice.
- To provide a fitting burial place for the victims who died.

2. To the Military Court of Katanga

- To investigate within the shortest possible time the case against Ademar Ilunga Kote Kubaya in order to make known the truth about the bloody events of Kilwa, so that justice may be done to the innocent victims.
- To guarantee the security of surviving victims and witnesses who may give statements.
- To guarantee the security of local human rights organizations and protect them from threats and any risks they may face because of their work on Kilwa.

3. To the Australian Federal Police

- To investigate as quickly as possible the alleged role of Anvil Mining in the commission of human rights violations at Kilwa.

4. To the World Bank/Multilateral Investment Guarantee Agency

- To establish whether the assurances and warranties given by Anvil Mining to obtain political risk insurance in a post conflict situation were adhered to.

5. To Anvil Mining Congo

- To make public the results of its internal investigation into the Kilwa incident of October 2004.
- To encourage and facilitate its employees, past and present, who may have witnessed some of the alleged human rights violations carried out by the Congolese Armed Forces, and in which the company is allegedly implicated, to come forward individually and assist the Congolese judicial authorities, the Australian Federal Police and the Human Rights Division of MONUC in their inquiries.
- To cooperate more fully with the independent press and non-governmental organizations in a common search to establish the truth about these deplorable events in order to ensure that a similar situation does not happen in the future.

1 Introduction

This is a report of a field visit to Kilwa, a remote town in Katanga, by, Action contre l'impunité pour les droits humains (ACIDH) – Rights and Accountability in Development's (RAID) Congolese partner. The mission was carried out between 12 and 22 September 2005.[1] In October 2004, in Kilwa, about 100 people – the majority of them innocent civilians – are believed to have been killed by the Congolese Armed Forces (Forces Armées de la République Démocratique du Congo – FARDC). One of the areas of controversy concerns the use made by the Congolese military of Anvil Mining Ltd.'s (hereafter 'Anvil' or 'the company') logistics and personnel in the military's counter-offensive to crush insurgents in the town.

The publication of this report coincides with the first anniversary of the Kilwa massacre, which took place between 14 and 16 October 2004. The purpose of the report is to help the victims and their families in their search for justice, including:

- To help the surviving victims obtain access to justice and to demand their right to compensation.
- To call for those victims who lost their lives to have a right to a decent burial.
- To help establish the civil and criminal liability of different actors allegedly responsible for these events.
- To draw lessons about the moral responsibility of the multinational company allegedly involved in these events.

Both ACIDH, an organization based in Lubumbashi that fights against impunity in the Democratic Republic of the Congo (DRC), and RAID, a British NGO based in Oxford that promotes ethical behaviour by multinational companies, note that while there is no disagreement about the massacre, summary executions and looting – as these facts have been confirmed by a report by the United Nations Organization Mission in the DRC (MONUC) – until now, no one has been clearly and publicly identified as being responsible, prosecuted, or punished in accordance with the law.

The victims, whose bodies were thrown into mass graves, did not even have the right to a proper burial; those who survived have not been compensated; and not a single political authority has informed the public about the exact circumstances of these human rights violations.

On the other hand, threats have been made against NGOs, including ASADHO/Katanga (which brought out the first report on the Kilwa incident in January 2005), and other people who have dared to ask the competent bodies to establish the truth Officials, traditional leaders and the multinational cited in the reports about the incident have been almost exclusively concerned in protecting the company's image. Numerous groups have sprung up and sown confusion in the minds of the public with little regard for the rights of the victims.

In response to this state of affairs and motivated by a concern to establish the truth and help the victims by bringing those allegedly responsible to justice, ACIDH and RAID felt compelled to investigate the situation of the victims and witnesses who were interviewed by the Australian television programme, 'Four Corners'. In June 2005, the programme entitled, 'The Kilwa Incident', which examined Anvil Mining's role in the massacre, was screened by the Australian Broadcasting Corporation. It provoked a storm of controversy in the Australian and international press.

[1] ACIDH, Rapport de Mission de Kilwa, September 2005 (confidential); hereafter referred to as 'the ACIDH report'.

1.1 The Kilwa Incident[2]

Between 22 and 24 October 2004, a team of the special human rights investigative Unit of MONUC, comprising officers of the human rights, political affairs, humanitarian affairs, child protection and public information sections, undertook a mission of verification in Kilwa, a mining town of 48,000 inhabitants located at the border of Zambia, on the Mwero Lake (Pweto territory, High Katanga district, Katanga Province). Kilwa is located 350 km north of Lubumbashi, in an area where MONUC is not represented on the ground.[3]

According to local sources, more than 100 people were killed following the counter-offensive launched by members of the Armed Forces of the Democratic Republic of Congo (FARDC) (62nd brigade headed by Colonel Ilunga Ademars) on 15 October 2004; the FARDC aimed to crush a poorly organised and poorly armed rebellion movement which occupied the town of Kilwa in the early hours of 14 October 2004. MONUC was able to gather some information related to the death of 73 people, at least 28 of whom appear to have been summarily executed. MONUC also found that the FARDC were responsible for acts of pillage, extortion, and arbitrary detention.[4]

According to statements made to MONUC by eyewitness:

> "The Armed Forces of the Democratic Republic of Congo (FARDC) used vehicles of the mining company Anvil Mining during their operation in Kilwa. These vehicles appear to have been used to transport pillaged goods as well as corpses – which may have included victims of summary execution – to the area of Nsensele; there, MONUC located two shallow graves and one individual grave. Anvil Mining has confirmed to MONUC that the FARDC did use the company's vehicles, but Anvil has denied that the vehicles were used to transport corpses or pillaged goods. Anvil Mining has also acknowledged that planes chartered by the company to evacuate its personnel to Lubumbashi were used on 14 and 15 October to transport approximately 150 soldiers in the area of operation. These planes were also used to transport to Lubumbashi some of the suspects arrested by the army following its counter-offensive in Kilwa. MONUC was able to confirm that three drivers of the company Anvil Mining drove the vehicles used by the FARDC[5]. MONUC was also able to confirm that food was provided to the armed forces in order to – according to Anvil – prevent the pillage of goods of civilians. Anvil also appears to have acknowledged to have contributed to the payment of a certain number of soldiers".[6]

1.2 Objectives of ACIDH's Mission to Kilwa

- To evaluate the current political and security situation in Kilwa in general and that of the victims and witnesses in particular, who earlier had contact with the Australian journalists and to listen to their grievances and assess their need for justice.

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[2] This account is largely taken from the official MONUC report of its investigations into the incident, '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 FARD C à Kilwa (Province de Katanga) le 15 octobre 2004' Kinshasa,' undated, but released on 23 September 2005. Hereafter 'the MONUC report'. It is only in French and has not yet been released publicly but is available on written request to the Special Representative of the Secretary General of the United Nations. The English translation is by RAID.

[3] MONUC report, paragraph 1

[4] MONUC report, paragraph 2

[5] The information of MONUC according to which an international security officer of Anvil was also in the vehicles used by the army was denied by Anvil.

[6] MONUC report, paragraph 36

- To record the reactions of the local authorities and different parties implicated in the events.
- To note the reactions and the measures taken by Anvil Mining regarding its alleged involvement in the massacre of October 2004.
- To identify the victims and witnesses.

1.3 Methodology

The on-site mission to Kilwa organised by ACIDH took place between 12 and 22 September 2005. It consisted of a series of interviews with different people and in door-to-door visits to victims still living in the locality. Finally, a visit to the mass graves sites at Nsensele was undertaken.

The mission encountered a number of difficulties, including transport problems, the start of the electoral census process (which coincided with the mission's arrival), and the unavailability of some key informants.

2 Mission Report

2.1 Account of the Security Situation

2.1.1 The Political and Security Situation in the Kilwa Area

The political and security situation in Kilwa is relatively calm. However, it is a precarious calm that masks a lot of internal social tensions linked to the latent hostility between ethnic communities. Outsiders have been accused by the local community of having occupied all the economic space and of having taken the majority of jobs at the one company present in the area. These tensions have been fuelled by the speeches of ethnic political leaders in Lubumbashi and Kinshasa and relayed to the grassroots through various networks. It is worth recalling that the former military commander Col. Ademar Ilunga (now in detention and under investigation for the Kilwa massacre) was not from the area. His actions are therefore subject to a variety of different subjective interpretations.

Recent events illustrate the underlying tensions. On 15 September 2005, an Anvil convoy transporting bags with money to pay the wages of its employees was attacked on the road to Dikulushi by FARDC soldiers, some of whom were later arrested, but not the leader of the operation.[7] A policeman, 'Shebele', who was escorting the convoy, was seriously wounded and taken to Lubumbashi.

This prompt action in response to the attack on Anvil's convoy contrasts with the lack of urgency on the part of the Congolese authorities to investigate the human rights violations that took place in Kilwa a year ago. The soldiers responsible for the massacre of October 2004 remained in the Kilwa area until relatively recently in July 2005. Their replacement has not, however, put an end to the harassment of the local population by the military, police, and the different security services, which takes the form of torture, extortion, and arbitrary detentions.[8]

[7] The first names of the following soldiers were reported as: Captain John, a lieutenant, Honore, Mobutu.
[8] For example, one woman called Esther was tortured for a whole night from Tuesday 20 to Wednesday 21 September 2005 at the ANR post simply on the basis of a rumor that she had sold her child in Zambia. She had in fact taken her son to live with an uncle so that he could undergo some tests.

2.1.2 Security Situation of the Victims and their Need for Justice.

Security Situation of the Victims

Not a single case of insecurity or threats to victims was reported during the mission. This is true for both survivors of the massacre and for those who had been in touch with the journalists from 'Four Corners'.

However just after the recapture of Kilwa by the FARDC on 15 October 2004, the holding of wakes or funerals was formally banned throughout Kilwa. The continued presence in the area of the soldiers responsible for the massacre for nine months after the incident undoubtedly contributed to a climate of insecurity and terror for the families of the victims and the witnesses.

One year after the event, the bodies of the victims are still heaped together in mass graves at Nsensele, the resting place of others is still unknown because the political authorities do not allow the relatives access to the remains nor do they provide them with any information.

The survivors have to endure an inconsolable anguish; they remain silent about their dead loved ones and about what they have suffered. Instead some 'civil society' groups have taken it upon themselves to become spokespersons. Petitions have been published that none of the victims that the mission met had any knowledge of. But in reality it is the climate of oppression that determines the attitude of the population towards Anvil Mining and the events of October 2004, rather than the views presented by some local figures such as the traditional chiefs and administrative and security officials who receive monthly payments from the company.[9]

The Victims' Grievances and the Need for Justice

The majority of the survivors of the massacre would like to know the truth about the Mouvement révolutionnaire pour la libération du Katanga (Revolutionary Movement for the Liberation of Katanga – MRLK) and its leader, Kazadi Mukalay, and about the uprising.[10] The relatives of the victims who died, whom the mission met, expressed a clear wish to take legal action to obtain compensation.

The people who were interviewed were greatly surprised to learn that a memorandum had been drafted in the name of the population of Kilwa. They had no knowledge of who might have initiated this action or about their motives. None of the victims' families admitted to having been consulted or had any knowledge of this document which, if Anvil's press release of 23 August 2005 is to be believed, was endorsed by 3,700 people.

An extract of this petition, taken from Page 3 of an Anvil press release, only gives the names of eight people, seven of whom are traditional leaders.[11]

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[9] A source who asked to remain anonymous reported that Anvil Mining each month provides about $ 5000 to pay the local Congolese authorities.

[10] Alain Kazadi Mukalay was a 20-year old fisherman from Pweto who declared himself to be the leader of the uprising. He died in custody. The Mouvement révolutionnaire pour la libération du Katanga (Revolutionary Movement for the Liberation of Katanga – MRLK) before the Kilwa incident was unknown.

[11] These stated on page 1 paragraph 1 of the petition: ' We, the traditional chiefs of the Moero Sector, at a meeting in Kilwa, the capital of the Moero Sector, take this opportunity to issue a firm denial of the involvement of Anvil Mining Congo in the massacre perpetrated on the Kilwa population during the sad events that happened in Kilwa.' At the end and on a separate page the following 8 signatures appear: Michel KABUNDI, chief of the Kilomba grouping; Roger SHULA MWELWA, land chief Shula. Celestin NDOBA MAMBWA, leader of the Kyaka grouping; KABWENDE NGOYI, chief o the Kantenge locality (Kilwa); KIBAMBO SEPWE, chief of the Kinsali locality (Kilwa);

2.2 Reactions of the Public Authorities and Implicated Parties

2.2.1 Reactions of the Congolese Local and Provincial Authorities

Interview held on 15 September 2005 in Kilwa with local authorities, notably the Sector Chief of Kilwa, M. Mucheki Kalunga and his Administrative Secretary, Emmanuel Mwamba.

They said that they did not take any official position regarding the events of October 2004 other than what had been expressed by the hierarchy in Lubumbashi. They recognised however that a massacre of the civilian population had taken place and that Anvil was involved. They exonerated the company on the grounds that there was a state of war, it was in the national interest, and because there was a need to protect investors.

When asked precisely if they knew about the existence of a requisition or a verbal order from an authority allowing FARDC to use Anvil's vehicles, they stated that they did not know of any such order, because they were absent (they had fled Kilwa); however in view of the practicalities, the state of necessity, the urgency and the national interest, they would not have had any objection.

As for the massacre itself, they recognised that it had taken place, but they maintained that these crimes were the sole responsibility of Colonel Ademar who acted as if he were in charge. Anvil should not be condemned for that. Moreover, there existed some sort of tacit agreement between the company and the State whereby Anvil would assist the local administration any time that it needed something without compensation, such as the transport of officials, the provision of petrol, free air transport on Anvil's chartered planes, the payment of 'bonuses' to different chiefs (but not to all), etc., which had been the situation for more than two years.[12]

In response to the question of whether Anvil's managers might have known that massacres had been carried out with the use of their vehicles, the Sector Chief of Kilwa and his Administrative Secretary stated that it was impossible for Anvil not to have been aware of what happened, not least because its vehicles [were used] and its drivers were driving the company's vehicles, even if at times the soldiers drove them. But this was inevitable given the state of war.

When asked what Anvil had done for the local population, they referred to the painting of the walls and supplying electricity to the Kilwa hospital, the building of a school at Dikulushi and the casual work given to local people. But they did not think this was enough. The company caused serious problems to the local administration. For example, the company is outside the control of public authorities and it is not answerable to any authority in Kilwa.

Local and Provincial Authorities

- On 11 June 2005, letter No. 10/0844/CAB/GP/KAT2005) from Urbain Kisula Ngoy, the Governor of Katanga to Anvil's General Manager, Lubumbashi stated: "I hereby

KABENGELE KALABA, chief of the Katuti locality (Kilwa); NGOYI MANGAZINI, president ABAZEKA and coordinator; KYUUNGU ILUNGA Jacques.

[12] Informants who requested anonymity report for example that the Administrator of the Territory receives monthly 200,000 Congolese Francs (more than $ 420) the deputy administrators and the sector chief: 120,000 CF (more than $ 200) and the others sums of about 70, 000 CF a month ($ 150).

confirm (emphasis added) 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".[13]

- On 27 June 2005, at a meeting of the customary council, the traditional chiefs of the Moero Sector met and signed a petition: "Petition of the Traditional Chiefs of Kilwa and its surroundings. Denial of the involvement of AMC [Anvil Mining Congo SARL] in the unhappy events of Kilwa between 13 and 14 October 2004" addressed to Bill Turner. The document clears Anvil Mining of any responsibility for the massacre.[14]

- On 7 July 2005, Monsieur Donatien Nyembo Kimuni, press attaché of the Governor of Katanga, appeared on the Congolese State television's 'Panorama' programme and stated: "[ASADHO] must now be severely treated by everyone…it is working against the interests of Katanga…it is an organisation that harms all of Katanga's children…it attacks investors in Katanga in order to plunge the province into poverty…and things must not go on like this, we must react…"[15]

- On 16 July 2005, the same group of traditional chiefs presented to Bill Turner a declaration, which states in its fourth paragraph: "We have just issued a formal denial of the allegations implicating Anvil in the unhappy and sadly remembered events (…) We and our people deem these allegations to be unfair and unsubstantiated designed to undermine the reputation of AMC and to destabilise the company as it seeks bit by bit to establish itself."

- On 5 September 2005, the Governor of Katanga, Urbain Kisula Ngoy, summoned several local NGOs, including ASADHO/Katanga, ACIDH, CDH and GANVE, to meet Bill Turner of AMC in front of the press.[16]

National Authorities

- Two days after Kilwa was retaken, M. Augustin Katumba Mwanke, a close associate of President Joseph Kabila, who is also from the Kilwa area, arrived on the Zambian Island of Nshimba, 7 km from the Kilwa coast. Several bodies were shown to him (most probably those of the people who had drowned trying to flee the FARDC by boat). The families complained to him about the massacre that had just taken place and about the fact that many bodies had not yet been buried.

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[13] The Governor's letter does not state if 'the instructions' were written and nothing would justify a verbal order given that Anvil has an office in Lubumbashi.

[14] The customary chiefs are correct in saying that no massacre took place on 13 and 14 October 2004 because at that time Kilwa was under the control of the insurgents. But the massacre occurred from 15 October onwards when the FARDC recaptured Kilwa thanks to the logistical support, food and money that Anvil provided.

[15] Cf. Letter No ACIDH/HT/PK/072/07/05 of 18 July 2005 to the Prosecutor of the Republic re: 'Campaign against human rights organizations on RTNC/Katanga'

[16] According to a press release by ASADHO/Katanga No 15/2005 of 28 September 2005 'ASADHO was troubled by the attitude of the Governor of Katanga, Dr Urbain Kisula Ngoy, which tended to defend at all costs the mining companies in Katanga. At different meetings with human rights NGOs, the one on 05/05/05 to which the Governor had invited Anvil Mining and the press, and the one on 18/09/05, he stated that the NGOs were playing the game of politicians and behaving like people with no allegiance to their country, taking positions based on nothing, discouraging investors, seeking to take over the role of the public authorities, selling out the country to foreigners through their press releases and reports…'

- Katumba Mwanke did not react and no measure to pursue those responsible for these crimes was taken. He simply urged the displaced people to return to Kilwa and to continue to live normally. At the same time, Anvil Mining mobilised its barge on the lake and sent out its lorries to the village of Mukupa and beyond to bring back the displaced people.

- The return of the displaced people is confirmed on Page 6 of the Traditional Chiefs' Petition, dated 27 June 2005, where it states: "Moreover the company's barge had been mobilized to go and fetch the population of Kilwa who had fled and taken refuge on the Zambian island of Nsimba, 7 km from Kilwa. The lorries, going hither and thither as far as Mukupa, a village 55 km from Kilwa on the Lubumbashi road, were placed at the disposal of the population that had fled to enable them to return to Kilwa. If the Anvil Mining Congo's authorities wanted to hunt down and kill the population, they would not have done all these highly philanthropic actions, even if they wanted to cover things up.

From the analysis of these statements and from information gathered from speaking to the local people in Kilwa, it would appear that the actions of the authorities were exclusively concerned with protecting the interests of Anvil Mining Congo. This view is supported by the fact that no action to help the population of neither Kilwa in general nor the victims in particular has been undertaken since the massacre.[17]

2.2.2 Legal Actions by the Military Court of Katanga

Colonel Ademar Ilunga Kote Kubaya was arrested on 29 June 2005 on the orders of the Military Court of Katanga and faces 14 charges, including murder, torture, and looting. The criminal investigation began on 4 July 2005. Since 10 July 2005, Colonel Ademar Ilunga has been detained in Kasapa Central Prison.

The motives for Colonel Ademar's arrest were unconnected with the Kilwa incident.

However, as a result of pressure from MONUC (which had warmly welcomed the arrest of the Colonel) and the actions of independent organisations, an on-site visit to Kilwa, commencing on 10 October 2005, was arranged by the Military Court of Katanga, together with the Human Rights Section of MONUC and defence and prosecution lawyers.

2.3 Investigations and Reactions of Different Interested Actors

- ASADHO/Katanga visited Kilwa from 4 to 15 December 2004, only two months after the incident and made public its report in January 2005. This report confirmed the massacre and other abuses perpetrated by the FARDC and led by Colonel Ademar Ilunga, nicknamed Kisu Makali Kote Kubya, [18] with logistical help from Anvil Mining. It did not explicitly hold the company responsible.

- On 28 February 2005, ACIDH wrote a letter to Anvil expressing its concerns about the human rights violations that had occurred in Kilwa.[19]

[17] The District Commission, M. Mwelwa Nsambi, after his last visit to Kilwa asked the families of the victims to register with the local administration with the promise of some assistance. But to date nothing had been done.
[18] Literally double bladed knife, bad in all respects.
[19] Letter ACIDH/PK/HT/007/02/2005

- On the same date, ACIDH issued a press release in which it reported that on 15 October 2004, Kilwa had been retaken by the 62nd FARDC Battalion based at Pweto, led by Colonel Ademar Ilunga, who according to ACIDH's sources, "had used the vehicles and machines of Anvil Mining to loot and summarily execute about 100 civilians…" ACIDH express its concern that this information implicated highly-placed Congolese authorities and officials of international organisations who are linked to mining interests.[20]

- From 13 to 15 May 2005, a crew from the Australian Broadcasting Corporation's 'Four Corners' programme, accompanied by a member of ACDIH, went to film in Kilwa and the surrounding area. The crew was preparing a documentary about the October 2004 incident and the alleged role of Anvil Mining, based on interviews with local people.

- On 6 June 2005, Australian television broadcast the 'Four Corners' programme about the Kilwa massacre. It included an exclusive interview with Bill Turner, Anvil's Chief Executive Officer, about the alleged involvement of the company in the incident.

- On 12 July 2005, a document appeared with the title "Patriotic Appeal No 003/03. Unhappy Announcement. Foreign (European) NGOs have a grudge against the DRC and Congolese companies". It was attributed to Action contre l'Aliénation et la Manipulation (Action against Alienation and Manipulation – AAM), which is part of another organisation, Réseau de Lutte contre la Corruption et la Fraude (The Anti Corruption Network – RELCOF).[21] The document goes on in a critical vein: "For some time now there has been an ill omened agitation on the part of NGOs who amuse themselves by going for Congolese companies accusing them, often without any tangible proof, of all sorts of evils as if they were responsible for the destruction of the DR Congo."

  The author of this three-page document states that "during the first part of 2005, more than two meetings were held in Zambia, at Ndola and then in Lusaka, to evaluate Congolese companies and their contribution to development in the DRC and in the region…during these meetings …M. Eric Bruyland (a Belgian journalist), Madame Patricia Feeney, a certain Charles, the Belgian NGO 11 11 11, RED (sic), GRAETS (sic), were not trying to help the DRC, but rather to gather material to accuse private companies operating in the Congo…"[22]

- On 13 July 2005, a document entitled "Memorandum from the Population of Kilwa" addressed to Bill Turner, which was signed by a number of organisations, including Société Civile du Congo-Kilwa (SOCICO), SEMPYA, Groupe des Volontaires de Kilwa (GVK), Commission Justice et Paix (CJP), concluded its analysis of the situation in the following terms: "In our view the alleged involvement of Anvil Mining Congo in the looting and the disappearance of people as has been reported in the media should be considered as misleading international public opinion."

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[20] ACIDH n° 005/ACIDH/02/05

[21] ACIDH and RAID note three things: i) this anonymous document, without an address or telephone number was published with the email address: aammus2005@yahoo.fr, No oo3/05 is the only existing AAM public document. After its publication no one knew anything about these organisations' existence or who was behind it. ii) RAID and ACIDH have no knowledge of any such meetings in Zambia or anywhere else. iii) After making inquiries, none of the international organizations, or the journalist cited in the document had heard of AAM. It was only after Anvil Mining issued its own report of the NGO visit to Dikulushi on 30 August 2005 and on the basis of business cards that were distributed during the visit, that it became apparent that M. Caiman Kayembe Ngwama is the President of both AAM and RELCOF.

[22] The companies defended in the AAM document are inter alia: Anvil Mining, and two Forrest Group companies, STL, and EGMF.

- On 17 August 2005, RELCOF issued a report, which concluded with the following recommendations: "To the Government, that it take responsibility for preventing the campaign of denigration against a company that has only submitted itself to the laws of the DR Congo; To the International Community, not to accept as genuine the unverified reports transmitted to them by some local organisations to improve their image abroad; To local organisations, to avoid prostituting their consciences by selling a bad image of their country abroad to serve the interests of adversaries…"[23].

- In September 2005, RELCOF issued a supplement to its previous report, which is largely an apologia for Anvil. It was circulated on the Internet. Anvil also distributed it widely.

- In early October 2005, RAID, in response to the reports circulated by Anvil, RELCOF and 'AAM', issued its own account of the visit to the Dikulushi Mine undertaken in August.

- Numerous press articles have appeared above all in the international press and particularly in Australia, which have commented on MONUC's report of its investigations, on the alleged involvement of Anvil in the Kilwa massacre, the criminal investigation undertaken by the Australian Federal Police, the civil action being taken by a Melbourne law firm, Slater & Gordon, on behalf of some of the victims.

2.4 Reactions and Steps taken by Anvil Mining

It was not until June 2005 that Anvil Mining made any public statement about the October 2004 incident after the Four Corners programme about the Kilwa massacre was broadcasted and the Australian authorities began to take an interest in the incident.

- On 15 and 16 July 2005, Bill Turner visited Dikulushi

- On 23 August 2005, Anvil Mining, from its headquarters in Perth, Australia, issued a press release in which it maintained that all the allegations against the company were unsubstantiated and denying that it had ever been contacted by the Australian Federal Police or by any Australian Government official.

- On 30 August 2005, Anvil Mining circulated a report "The NGO Visit to the Dikulushi Mine, DRC" in which Bill Turner presented the company's response to the allegations against the company and confronted its critics with the truth.

An Anvil Mining representative (who wished to remain anonymous) who met the mission in Kilwa defended the company in the following way:

At the time of the uprising, a verbal requisition order existed based on Decree Law No. 1122/FP of 11 June 1940, modified by Decree Laws Nos. 170/AIMO of 15 May 1942 (B.A., p. 577) and 311/AIMO of 7 November 1942 (B.A., p. 1982) concerning civilian requisitions.

This verbal order was confirmed in a letter from the Governor of Katanga, dated 11 June 2005 and addressed to the President of Anvil Mining, Bill Turner.

[23] Réseau de Lutte contre la Corruption et la Fraude (RELCOF), rapport No 9 *Massacre de Kilwa au Katanga. Manipulation et double jeu des ONG locales* 17 August 2005

The company acted in good faith and with the best of intentions allowing its vehicles to be used, but it also had an interest in protecting its mine 55 km away from Kilwa in Dikulushi. It uses the port at Kilwa to transport its production to Zambia.

Public opinion in Kilwa expressed in different documents has cleared the company of any blame.

The Anvil representative criticized ASADHO's report and supported RELCOF's report and made the following observations:

- The mass graves mentioned in the report by ASADHO/Katanga were not excavated by Anvil, but are old laterite quarries dug by the Congolese Roads' Department and date from 1974.

- Dikulushi does not have an airstrip, which Anvil could use to transport minerals by helicopter [a claim made previously by another NGO]. The airstrip is under construction, but is not yet completed.

- The population of Kilwa supports Anvil; that view was expressed in the memorandum and in interviews conducted by RELCOF.

- Madame Patricia Feeney was very disappointed when the 'truths' in ASADHO's report, which she had vigorously defended and which form the basis of the accusations against the company, were refuted at meetings with the traditional authorities during her visit.

- Moreover the group of investors who finance Anvil are convinced of its innocence in this affair and the company is sure that it will win any legal action.

The Anvil representative did, however, note that during the visit to the mass graves at Nsensele, the South African Consul, who was part of the delegation, was indignant about the fact that the victims had still not been given a proper burial. The Consul stated that he was going to ask his government to provide funds so that the people he called 'heroes' called be exhumed, identified and buried as human beings.

2.5 Position of Some Members of Kilwa Civil Society

Messieurs Kinaka Musafiri, secretary of the socio cultural society SEMPYA and permanent secretary of Organisation des Travailleurs Unis du Congo (Congolese United Workers Organisation – OTUC) and Makamba Elie, treasurer of the Societe Civil du Congo-Kilwa (SOCICO/Kilwa).

The responses to the interviewer's questions are summarized below:

1. There are some undeniable facts that are beyond dispute, which the whole population of Kilwa is aware of, including:

   - The massacre of civilians by the FARDC

   - The use by the FARDC of Anvil Mining's vehicles, not only to transport troops to recapture Kilwa, but also to loot the town and to transport prisoners to Nsensele. An Anvil driver called 'Shimpundu/Shambuyi' had been identified.[24]

[24] A name commonly given to the father of twins.

- The support Anvil provided in terms of food and money to the soldiers during and after the retaking of the town.[25]

They added that while it had not been Anvil's intention to urge the soldiers to kill the local people, perhaps if Ademar had not received this support, it would have been difficult for him to dislodge the insurgents from Kilwa and there would have been less damage done.

They qualified this observation by making reference to the insubordinate nature of the troops and the poor character of Colonel Ademar.

Among the positive facts in Anvil's favour, they mentioned the refurbishment and electrification of the hospital. However, they found these upgrades insufficient and deplored the company's social policy, which was to recruit from outside the area and for its failure to provide insurance benefits to the workers (contrary to Congolese labour laws).

When asked why they had participated in the drafting of the memorandum and signed it when it absolved Anvil of any blame, they preferred not to reply, arguing that they could not speak for others in their absence.

2.6 The Victims and Witnesses

As yet, there is no definitive list of victims of the Kilwa massacre, from either official sources or from independent human rights organisations. As a result of meeting family members in their homes, ACIDH has been able to identify some of the victims and establish the probable circumstances in which they died or disappeared. Witnesses also came forward with information about the way the FARDC acted during the counter-attack.

During the mission, 33 families of victims were interviewed and 28 deaths were reported. (The list and details about the victims compiled by ACIDH have been sent to MONUC, the Australian Federal Police and the Military Prosecutor of Lubumbashi.) The following information was given:

- One case of an alleged insurgent killed on 16 October 2004. He was a retired policeman, and he had been active in the self defence movement (FAP) during the war and sympathised with the insurgents.

- Ten deaths by drowning in Lake Moero during an attempt to escape the FARDC's counter-offensive.

- Three cases of people who were wounded, but survived, albeit with terrible physical injuries. One of whom later died.

- Two people who managed to escape the massacre, one narrowly avoided summary execution at Nsensele.

- Eight cases of summary execution or disappearance.

During the assault on Kilwa, when the insurgents put up no resistance, anyone found alive was subjected to varying human rights abuses, including:

[25] One informant alleged that the soldiers had put on Anvil uniforms when they carried out reconnaissance before the counter-attack.

- Arrested and ransomed: one case concerned the wife of a businessman who had to pay $1,400 to save her life and business.

- Another woman had saved her life by giving the soldiers money, but the man who was helping to carry her crates was arrested and executed at Nsensele on 15 October 2004.

- Some of those arrested were taken to the Hotel Kabyata and from there, in the majority of cases, taken to Nsensele and executed.

- Some were simply beaten on the spot with no other consequences.

Once the FARDC had brought Kilwa under its control on 15 October 2004 and in the following days, the soldiers began to do house to house searches in all the different areas of the town. It was during these operations that more people were killed or wounded in their own homes or plots of land.

Apart from this, ACIDH was told that the victims included non-residents of Kilwa and some families had already left Kilwa and were living elsewhere. Also, given that wakes had been forbidden during this period, it was difficult for people or the families of victims to identify each other.

As for the circumstances in which people met their death, they could vary, but in the majority of cases the families were trying to escape.

Some information was made available, however, which though insufficient may help identify other victims.

- Two youths were arrested near the hospital where, for a time, they had taken refuge, but they had gone out to check on the state of their homes.

- One woman died of her wounds at the hospital. At Kilwa she was a lodger in the house of M. Jean Changa. She was treated by Drs. Philippe and Patrick.

- One pupil from the Bukongolo.

- The son of M. Kabuchungu, a teacher who is no longer at Kilwa.

- The bodies of two youths, which were left in the hospital morgue.

- The nephew of M. Mudjibu who was arrested in the Katambala fishing ground with two others. He died following a haemorrhage from a bullet wound in his leg.

An informant citing local Red Cross sources said that apart from the mass graves at Nsensele, there were three others: one containing 34 bodies, the other 32 and one with two bodies. It is also worth bearing in mind that it was only in Kilwa that people were killed, others died in far flung villages.

When asked what had caused the mass flight of the population before Colonel Ademar's arrival, people told ACIDH that a message had been sent over the radio warning them that the troops would show no mercy. Whoever was found in Kilwa would be treated as an insurgent. Two Kilwa radio operators have confirmed this information saying that that they heard the message from Colonel Ademar being transmitted while in the bush.

3 Conclusion

The on-site mission report cannot be concluded without formulating some critical observations about aspects of the investigation. After the mission, some questions remain that must be answered publicly.

- Why is it that the massacre, which no one doubts took place, did not interest the judicial authorities until one year after the event? What prompted the interest, given that there is unanimity about the facts, the alleged authors of the crimes, the circumstances, the place and the victims?

- Why did the military justice wait until Col. Ademar Ilunga was involved in another affair (the theft of firearms in Lubumbashi) before arresting him?

- Why is he still the only suspect to have been arrested?

- Why, a year after the massacre has no one in authority shown any concern about the surviving victims, the witnesses or helped to give those who died a decent burial?

- Why has there been a huge campaign to protect the company when public opinion is asking for a full and impartial inquiry to establish the facts?

- Why has MONUC not made its report public to help clarify the facts for Congolese public opinion?

- What are the exact circumstances in which the FARDC was able to take over Anvil's facilities and vehicles?

- What role did Anvil's drivers and security officers play during the counter-offensive?

- Was there a second requisition of Anvil's barge and lorries (if so, by whom) to repatriate the displaced people?

- In the absence of a requisition order, on what authority did Anvil take it upon itself the duty of the Congolese Government to make a demarche to the Zambian authorities in order to obtain the repatriation of the displaced people?[26]

- Who drove Anvil's barge and vehicles during the repatriation operation?

- Whose instructions were being followed?

ACIDH and RAID note:

- Incoherent and inconsistent responses have made the circumstances in which Anvil gave its vehicles to the FARDC troops obscure. Indeed, from reading the letter from the Governor of Katanga, the interview by Bill Turner, and the different reports issued and the statements of the population, it is clear that not a single piece of evidence has been produced to support the contention that Anvil received a firm instruction to put its

[26] ACIDH was informed that during the repatriation from Nshimba Island the Zambian authorities used the opportunity to expel a number of Congolese residents who lived there legally.

facilities and vehicles at the disposal of the 6th Military Region. Everything appears to have been orchestrated in order to make public opinion believe in the existence of' 'a verbal requisition order'.

- Witnesses' accounts strongly suggest the presence of Anvil Mining employees during the counter-attack on Kilwa. Although this fact has been denied categorically by Anvil, the company has not yet made public the results of its own internal inquiry or has it provided any evidence to disprove this allegation. Furthermore, the company has not explained what actions were taken by its drivers and security officers and its managers during the incident.

- The FARDC did not permit families to hold wakes or to bury the bodies of their family members who were victims of the massacre. This fact was confirmed by all of the people interviewed during the mission to Kilwa. The local political-administrative authorities have never given any reasons for this prohibition, nor have they taken steps to bury the dead in proper graves.

- People who made statements to the human rights organisations in December 2004 and later in May 2005 changed their accounts of the events after Anvil's internal inquiry took place in July and August 2005

- Soldiers responsible for the massacre who remained in Kilwa until Colonel. Ademar Ilunga's arrest in June 2005 contributed to a climate of insecurity for the victims' families and witnesses.

Post-Script

My son was arrested on 15 October 2004 by Col. Ademar's soldiers. [Twelve] people in all were detained including a neighbour who knew my son well. From there they were put onto an Isuzu pick up belonging to Dikulushi [Anvil] to be shot at Nsensele.

It was then that my neighbour told me "we were lined up along the ditch to be shot. I was in a state, lost consciousness and fell suddenly into the ditch, while the other bodies piled up on top of me. When I regained consciousness and realised that I and another man, both covered in blood, were safe. I began to walk into the bush without knowing where I was going until night fell when I came to the village of Mutwale..."

On 18 October 2004, while I was searching for my son, all over the city of Kilwa, and in the neighbouring villages, I came to the village of Mutwale where my neighbour called out to me and told me that the blood in which his clothes were covered was my son's...

Father of a victim (identity withheld)