

Action contre l'impunité pour les droits humains (ACIDH)
Association Africaine de Défense des Droits de l'Homme/Katanga (ASADHO/Katanga)
Centre des Droits de l'Homme et du Droit Humanitaire (CDH)
Global Witness
Rights and Accountability in Development (RAID)

Human Rights Groups Denounce Obstruction of Justice Following Transfer of Kilwa Trial's Military Prosecutor

For Immediate Release:

London, UK/Lubumbashi, DRC (12 March 2007): Five Congolese and British non-governmental organisations (NGOs) have denounced the transfer of Colonel Eddy Nzabi Mbombo, the military prosecutor in the Kilwa trial, as an obstruction of the judicial process.

“The Kilwa trial represents a litmus test of the new government’s resolve to end impunity. The big question is will the trial be allowed to take its course free from any political pressure?” said Tricia Feeney, executive director of RAID.

The Kilwa trial concerns summary executions, torture, rape and looting carried out by the Congolese Armed Forces during an operation to suppress a small-scale rebellion in the town of Kilwa, in southern Democratic Republic of Congo (DRC), in October 2004.

The trial is significant, because those indicted include not only members of the Congolese armed forces – former Colonel Ademar Ilunga and eight of his subordinates – but also three former employees of the international mining company, Anvil Mining.

The trial has been stalled by procedural problems since December 2006. News of Prosecutor Colonel Eddy Nzabi Mbombo’s transfer on 24 February 2007 has further heightened concerns about the Kilwa trial’s prospects to secure justice for the victims.

There are concerns that changing the prosecutor at this stage in the trial will lead to further delays, because of Lieutenant Colonel Kasongo Kyolwele’s lack of familiarity with the details of the prosecution case. The NGOs also fear political interference and conflicts of interest could jeopardise the court’s independence and have called on President Kabila to protect due process. Other observers share this view, including the human rights division of the United Nations peacekeeping force, MONUC, which reported on 8 February 2007:

MONUC learned that the Military Prosecutor has been pressured to drop the charges brought against the Anvil Mining staff. MONUC deplures any interference and will take every opportunity to remind the relevant authorities of their responsibility to respect the independence of the judiciary.¹

In October 2006, Prosecutor Colonel Eddy Nzabi Mbombo referred the Kilwa case to Katanga’s military court. Colonel Ademar Ilunga and his subordinates are charged with breaches of the Geneva Convention and its Additional Protocols. The former Anvil employees are accused of having “knowingly facilitated the commission of war crimes by Ilunga Ademar and his men”.²

In the same month, ACIDH, RAID and Global Witness expressed concern after Prosecutor Nzabi Mbombo had come under political pressure following his indictments. In their urgent appeal, the NGOs called on President Kabila and the national military prosecutor to defend the rule of law and independence of the court. The groups also called on the Chief Executive of Anvil Mining, Bill Turner, to demonstrate his support for the trial to proceed without political interference and to cooperate fully with Congolese authorities.³

Prosecutor Colonel Eddy Nzabi Mbombo was replaced by Lieutenant Colonel Kasongo Kyolwele. Lieutenant Colonel Kasongo Kyolwele served as an adviser to Katumba Mwanke when he was governor of Katanga

Province. Katumba Mwanke is a former Board member of Anvil Mining Congo. He is also a close adviser to President Kabila and an influential member of his political party. In 2006, Katumba Mwanke was elected to the DRC's new National Assembly.

The NGOs are calling on President Joseph Kabila and the country's senior judicial authorities to:

- explain the reasons for transferring Colonel Eddy Nzabi Mbombo at this particular moment in the Kilwa trial;
- ensure the trial proceeds without political interference and with respect for due process; and
- ensure that the rights of the victims to a fair hearing and recourse to legal redress within a reasonable period will not be further compromised.

Anvil Mining confirmed that it provided logistical assistance to the Congolese Armed Forces in connection with the Kilwa incident.⁴ This was after the company had been identified in an Australian documentary about the incident. Anvil stated that its vehicles were "commandeered" and that it effectively had no choice but to comply.⁵ Whether or not this was so remains the subject of an ongoing Australian Federal Police investigation.

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For more information:

- Kilwa trial chronicle: http://raid-uk.org/work/kilwa_trial.htm
- Background Brief on the Kilwa incident and Anvil Mining: http://raid-uk.org/docs/Press_Releases/Background_Brief_15_Oct_06.pdf
- Press Release (15 October 2006) – “Congolese Military Judge Calls for the Prosecution of Former Anvil Mining Staff for Complicity in War Crimes”: http://raid-uk.org/news/Anvil_15_Oct_06.htm
- Urgent Appeal by ACIDH/RAID/Global Witness (26 October 2006) – “Military prosecutor in Kilwa trial recalled to Kinshasa: Political pressure intensifies after former Anvil Mining staff and Congolese military charged with commission of or complicity in war crimes”: http://raid-uk.org/docs/Anvil_Dikulushi/Urgent_Appeal_ENG.pdf
- Press Release (12 December 2006) – “Trial begins for Congolese military and Anvil Mining ex employees accused of crimes related to the October 2004 Kilwa massacre”. http://raid-uk.org/docs/Press_Releases/PR_Kilwa_Trial_ENG_12DEC06.pdf
- Further information on the Kilwa incident: http://raid-uk.org/work/anvil_dikulushi.htm

¹ MONUC Human Rights Division, “The Human Rights Situation in the Democratic Republic of Congo (DRC): During the period of July to December 2006”, 8 February 2007.

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 Urgent Appeal by ACIDH/RAID/Global Witness (26 October 2006) – “Military prosecutor in Kilwa trial recalled to Kinshasa: Political pressure intensifies after former Anvil Mining staff and Congolese military charged with commission of or complicity in war crimes”: http://raid-uk.org/docs/Anvil_Dikulushi/Urgent_Appeal_ENG.pdf

⁴ Anvil Mining Limited, “Anvil Confirms Denial of Unfounded Allegations”, news release, 21 June 2005.

⁵ Ibid.