

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

For immediate release:

Victims of Kilwa massacre denied justice by Congolese military court

London, UK/Lubumbashi, DRC (17 July 2007): Four Congolese and international non-governmental organisations (NGOs) today published a new report documenting serious flaws and irregularities in the trial of nine Congolese soldiers for war crimes, and three employees of Anvil Mining for complicity in war crimes, committed in Kilwa, in the Democratic Republic of Congo (DRC).

The trial, held before a military court, ended on 28 June 2007 with the acquittal of all the defendants on war crimes charges in relation to events in Kilwa.¹

Despite their importance, the proceedings have gone largely unreported in the DRC. According to journalists, the government put pressure on official media outlets not to cover the trial.

The NGO report, "*The Kilwa Trial: a denial of justice*", presents a detailed chronology of events from October 2004 to July 2007, starting with a military operation in the town of Kilwa, which resulted in the deaths of at least 73 civilians, and culminating in the verdict of the military court of Katanga.² It documents evidence on how the proceedings were plagued by obstructions and political interference.

The report includes extracts of eyewitness testimony and exposes inconsistencies in the statements of some of the defendants, including the Anvil Mining employees. These inconsistencies relate in particular to the presence of Anvil Mining employees in the town during the incident and the circumstances in which the company's vehicles and logistics were used by the Congolese military.

"The Kilwa trial failed to conform to international standards for a fair trial", said the NGOs. "We believe that in view of the persistent irregularities and obstructions, the court has failed to deliver justice to the victims of the Kilwa incident."

The conduct of the trial has also been criticised by Louise Arbour, the United Nations High Commissioner for Human Rights. She expressed misgivings about the verdict and said: "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

¹ Two of the military defendants were found guilty of the arbitrary detention and murder of two civilians in an unrelated incident in the town of Pweto and sentenced to life imprisonment. Two other soldiers received lesser sentences for their part in the same crimes.

² At the time of this release, a written version of the judgment had not been made available by the court. The information in this release is based on sources present at the hearing at which the court read out the judgment and an audio recording by Radio Okapi of the judgment.

evidence pointing to the commission of serious and deliberate human rights violations". She also criticised the inappropriate use of a military court to try civilians.³

At the end of the trial it was revealed that President Joseph Kabila had ordered the 6th military region "to do everything possible to retake Kilwa within 48 hours".⁴

The court took the view that there had been no summary executions in Kilwa or the surrounding area, but that people had been killed during "fierce" fighting between the rebels (consisting only of six or seven people) and the Congolese army. The court also found that fifteen soldiers – whom it failed to name - had lost their lives but, according to the UN peacekeeping operation MONUC, the Congolese army suffered no casualties during the clashes. The only deaths or injuries of military personnel mentioned by witnesses and the Red Cross relate to the victims of a road accident when an Anvil Mining vehicle crashed near Nsensele, the scene of alleged summary executions.

The military prosecutor and a number of the victims are appealing the judgment.

The Kilwa trial is one of the few cases in the DRC in which a commanding officer of the national army and his subordinates have been prosecuted for war crimes and other serious crimes, including human rights violations. It is also the first time in the DRC that foreign employees of a multinational company – one Canadian and two South African employees of Anvil Mining – have been charged with complicity in war crimes.

The military court found the company Anvil Mining not guilty. However, at the start of the trial, the prosecutor confirmed that it was only Anvil Mining's agents, and not Anvil Mining the company, who were on trial. It is therefore unclear on what legal basis the court could have cleared the company.

Throughout the trial, the court sought to dismiss or discredit the evidence of victims and their relatives. In its judgment, it accused human rights organisations of "trying to turn a humanitarian issue into a judicial affair".

The trial could have set an important precedent in ending the culture of impunity in the DRC. Instead, proceedings were mired in controversy from the outset:

- The Congolese authorities blocked investigations for almost a year.
- Witnesses and victims were intimidated during the investigation and trial phases.
- The military prosecutor was put under pressure to drop the charges against Anvil Mining's employees. When he resisted this pressure, he was transferred to another jurisdiction.

The NGOs are calling for the following actions:

- The governments of Australia, Canada and South Africa should act accountably as signatories of the *Rome Statute* and ensure that justice is served for the Kilwa victims. They should consider the information in "*The Kilwa Trial: a denial of justice*" that documents a perversion of justice in the DRC and act immediately to pursue investigations into the involvement of the

³ "High Commissioner for Human Rights concerned at Kilwa Military Trial in the Democratic Republic of the Congo", Geneva, 4 July 2007,

⁴ Transcript of an audio recording by Radio Okapi of the judgment in the Kilwa trial, as read out in court on 28 June 2007 in Lubumbashi.

company Anvil Mining and possible prosecutions against their nationals named in the Congolese trial.

- The UN should assist the Congolese authorities to protect witnesses from reprisals and to safeguard important forensic evidence. There are fears that, in the present climate, such evidence, which would be crucial in any appeal hearing or trial by another jurisdiction, may be destroyed or tampered with.
- The Congolese military judicial authorities should ensure that the appeal is heard promptly and in the presence of international observers. The appeal court should exercise independence and fairness and be prepared to reconsider all the evidence for the crimes committed in Kilwa. It should take into account the serious procedural flaws in the trial, which resulted in the verdict of 28 June 2007.

For the full report, “The Kilwa Trial: a denial of justice”, please see www.globalwitness.org/media_library_detail.php/560/en/kilwa_trial_a_denial_of_justice.

For further information, please contact:

RAID: Patricia Feeney, tel: +44 1865 515982 or +44 7796 178 447
Global Witness: Carina Tertsakian, tel: +44 207 561 6372
ACIDH: Emmanuel Umpula, tel: +243 997108022 or + 243 997293831
ASADHO/Katanga: Georges Kapiamba, tel: +243 81 404 3641 or +243 99 841 1070

Notes for editors

1. Anvil Mining is a company publicly traded on the Australian and Canadian stock exchanges.
2. Under international law, state signatories to the *Rome Statute* retain jurisdiction over nationals who commit alleged international criminal acts in foreign states. The taking up of jurisdiction over these cases is required where the host state is either unwilling or unable to genuinely prosecute.
3. In September 2005, the Australian Federal Police launched an investigation into allegations of Anvil Mining’s complicity in crimes against humanity or war crimes committed in Kilwa under Chapter 8 of the *Australian Criminal Code Act 1995*. The investigation is believed to be ongoing.
4. Canada is able to initiate investigation and prosecution of Canadian nationals under the *Crimes against Humanity and War Crimes Act (CAHWC Act)* enacted in 2000. The Canadian authorities are not known to have formally opened any investigation into the role of the Canadian national tried in the DRC for complicity in war crimes, nor into the role of Anvil Mining in these events.
5. The South African authorities are not known to have opened any investigation into the role of the two South African nationals tried in the DRC for complicity in war crimes. The *International Criminal Court Bill (“ICC Bill”)* 2001 empowers the Central Authority in South Africa to investigate allegations concerning these two individuals’ involvement in the Kilwa events.