

Anvil Mining Limited and the Kilwa Incident

Unanswered Questions

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ASADHO
Association Africaine de
défense des droits de l'Homme

B.P.909, Commune de Lubumbashi, Avenue KAPENDA,
N°565 Angle MOBUTU
Tel: +243 97032984 et +243 97022410 et 0818153407 et 0814043641
E-Mail : asadhokat@ic-lubum.cd



ACIDH

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

Avenue Des Usines N°317/Coin avenue Kasavubu
Commune de Lubumbashi
Tél : 00 243 97108022 et 00 243 970 11 202
E-mail : acidhrdc@ic-lubum.cd

RAID

Rights & Accountability in Development

Oxford, United Kingdom
Tel. (44) (0)1865 436 245
Fax: (44) (0)1865 270 721
E-mail : raid.oxford@ntlworld.com

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Introduction

Purpose and structure of this briefing

The purpose of this briefing is to review information about the Kilwa Incident of October 2004 in the Democratic Republic of Congo (DRC) and the use made by the Congolese military of Anvil Mining Limited's (hereafter 'Anvil' or 'the company') logistic and personnel in a counter-offensive to crush insurgents in the town. 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).

The briefing is a joint report of the UK-based Rights and Accountability in Development (RAID) and its Congolese partners Action Contre l'Impunité pour les Droits Humains (ACIDH) and ASADHO/Katanga (Association Africaine de Défense des Droits de l'Homme). The account of the Kilwa incident reproduced here is taken from a recently released official report of the United Nations Organization Mission in the Democratic Republic of Congo (MONUC) of its inquiry into alleged human rights violations by the FARDC.¹ This briefing also incorporates information obtained by ACIDH during field visits to Kilwa and the surrounding area carried out in May and September 2005. ACIDH and RAID have recently completed a report, which details ACIDH's findings (reproduced as Annex 2).²

The killings occurred during an operation to suppress a small-scale rebellion in Kilwa, a town of 48,000 inhabitants. Kilwa is located in a remote part of Katanga Province in the Democratic Republic of Congo (DRC), 350 km to the north of the regional capital, Lubumbashi. The town is close to Anvil's Dikulushi mine. Kilwa is crucial to Anvil's copper and silver mining operation, as it is a port on Lake Mweru from which the ore is shipped across to Zambia for processing.

Part I of this briefing examines the Kilwa incident. It begins with (1) the UN's report of the Kilwa Incident. Further details are provided (2) about MONUC's allegations concerning Anvil Mining contained in its report. The company has stated to MONUC the logistic, the transport by plane and the drivers were provided to the army following requests "which could not be refused".³ Anvil denies that its vehicles were used to transport bodies and looted goods.⁴ Subsequently, the company has stated that 'that it would vigorously defend any inference or allegation that it had knowledge of, or provided assistance to, the Democratic Republic of Congo (DRC) armed forces (known as FARDC) in the committing of any human rights violations during the suppression of a rebel insurgency in the town of Kilwa, in October 2004.' It is essential that the UN's allegations are examined fully in the light of the company's explanations to date. Hence this briefing highlights (3) key questions concerning the 'use being made of the company's logistic and personnel' by the FARDC during the army's 'counter-offensive in Kilwa and the crimes that then followed' and Anvil's knowledge of the Kilwa incident at a given point in time.⁵ Additional statements by Anvil concerning the Kilwa incident are quoted extensively alongside the unanswered questions and where the company has made a public response to a particular point, this is noted. (5) The state of knowledge of Anvil and its personnel about the Kilwa incident raises concerns over the company's compliance with the

¹ 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, but released to RAID on 23 September 2005. Hereafter 'the MONUC report'.

² ACIDH & RAID, *Joint Report on Kilwa: a year after the massacre of October 2004*, October 2005 (English translation of French original, hereafter referred to as 'the ACIDH-RAID report').

³ MONUC report, paragraph 39.

⁴ MONUC report, paragraph 36.

⁵ Quotation from MONUC report, paragraph 39.

OECD Guidelines for Multinational Enterprises and the Voluntary Principles on Security and Human Rights, in particular the requirement to ascertain the human rights record of the armed forces and to record and report alleged instances of human rights abuse. By way of an update and rejoinder, a final subsection (6) addresses points raised in Anvil's report on a recent visit by RAID's Executive Director and other NGOs to the mine site in August 2005.

Status of investigations

ACIDH, ASADHO/Katanga and RAID condemn in the strongest terms the human rights violations and crimes committed by the FARDC as described in MONUC's report on the Kilwa incident. We echo MONUC's call for the perpetrators are brought to justice.

Apart from MONUC, official action or investigations have been or are being undertaken by three different authorities into the Kilwa incident: the Congolese authorities have arrested Colonel Ademar Ilunga, the military commander of the Kilwa operation; the Australian Federal Police are conducting an investigation into Anvil's alleged complicity in human rights abuses. Civil action in Australia against the company is pending. In addition, the World Bank is conducting an audit of the Multilateral Investment Guarantee Agency's (MIGA – a World Bank affiliate) due diligence in the Dikulushi project.

The Congolese authorities – At the end of June 2004, the military commander of the Kilwa operation, Colonel Ademar Ilunga (referred to by MONUC as Colonel Ilunga Ademars),⁶ was placed under arrest. MONUC had a meeting with the Military Prosecuting Authorities in Lubumbashi in order to assist the inquiry and to share information it had in its possession. The investigation began on 4 July and Colonel Ademars faces fourteen charges, including torture, looting and murder. He has been held in the Kasapa prison, Lubumbashi since 10 July 2005.⁷

While recognising that Colonel Ademar's arrest constitutes an important step in the fight against impunity in the Democratic Republic of Congo, MONUC warns that 'many more efforts must still be made to ensure that other members of the military responsible and accessory to these crimes are being arrested, and to ensure the safety of victims and of witnesses.' RAID understands that, to date, the military prosecutor has not yet taken witness statements. At the time of RAID's visit to Kilwa (August 2005), witnesses, church people and local officials had no knowledge of any investigation by any Congolese authorities into the events of October 2004.

On 10 October 2005, Katangan Military Court officials, together with the Human Rights Division of MONUC and a team of lawyers for the defence and prosecution, visited Kilwa to conduct an on site investigation and gather information.⁸

ACIDH, ASADHO/Katanga and RAID back the call from MOUNC:

- that an in-depth and independent judicial investigation be conducted on the incident in Kilwa;
- that the court proceedings against Colonel Ademars be conducted fairly;
- that witnesses and victims present at the proceedings be protected by the authorities; and
- that other members of the military responsible and accessory to these crimes also be investigated.

The Australian Federal Police – In June 2005, the law firm Slater and Gordon, acting on behalf of RAID, the Human Rights Council of Australia, ASADHO/Katanga and ACIDH called upon the Australian Federal Police to investigate whether there is evidence of the commission of crimes against humanity or war crimes under Chapter 8 of the *Australian Criminal Code Act 1995*. Australian law dealing with crimes against humanity mirrors that of the International Criminal Court in The Hague. Torture and the systematic killing of civilians are crimes under Australian law – it is also a crime for an Australian national to assist someone to commit such crimes. In September 2005, the Australian Federal Government's Department of Foreign

⁶ The ACIDH-RAID report identifies him as Colonel Ademar Ilunga, also known as 'Kote Kubaya'.

⁷ MONUC report, paragraph 45.

⁸ ACIDH-RAID report, p. 18.

Affairs and Trade referred the matter to the Australian Federal Police (AFP) who have already begun their investigation.

Civil action – Slater and Gordon are also preparing civil action claims against Anvil on behalf of a number of victims.

World Bank – At the end of August 2005, the President of the World Bank, Paul Wolfowitz, in response to a letter from ACIDH, RAID and others, instructed the Compliance Advisor/Ombudsman (CAO) Unit to conduct an independent audit of MIGA's due diligence process for the Dikulushi project.⁹ The terms of reference for the CAO audit are limited and do not address the validity or otherwise of MONUC's allegations concerning Anvil. The final CAO report was sent to the President on 14 October. RAID will produce a separate briefing on due diligence in the Dikulushi project and the CAO's findings.

Background information on Anvil Mining Limited and the Dikulushi Mine

Anvil Mining Limited is incorporated in the Northwest Territories, Canada.¹⁰ Anvil Mining Limited is listed on both the Toronto Stock Exchange and the Australian Stock Exchange.¹¹ 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.¹²

According to the company, the Dikulushi deposit is one of the richest copper-silver mines in the world. However, although the mine is high grade, it is relatively small. Dikulushi mine is currently Anvil's principal asset and source of revenue. In the six months to the end of 2004, out of a revenue of \$16.2 million, Dikulushi accounted for \$15.8 million or 98%.¹³ In the full year to 30 June 2004, Anvil Mining Limited's annual revenue was \$30.5 million.¹⁴ The latest financial statements indicate that 100% of external revenue is attributable to DRC, i.e., to Dikulushi.¹⁵ Anvil Mining Limited's net earnings for the twelve months to June 2004 were \$6.0 million (of which \$4.6 million were attributable to Dikulushi), although the company recorded a loss of £1.46 million for the six months to June 2005.¹⁶

Anvil estimates that out of its investment in Dikulushi, \$13.7 million has been of direct benefit to the DRC, largely through payroll to local employees (\$3.8 million), contracts to DRC companies (\$5.2 million) and taxes and government charges (\$3.4 million).¹⁷ However, in relation to its contribution to Congolese government revenue, it should be noted that the company has negotiated considerable tax concessions with the DRC government: 'The Dikulushi Mine operations in the DRC currently enjoy a concessionary tax benefit of reduced income tax rates for the first fifteen years from the date of first commercial mine production, which commenced in October 2002.'¹⁸ The effective rate for this first five years of production is

⁹ Letter from Philippe Valahu, Acting Director of MIGA's Operations Group, on behalf of the President of the World Bank, to RAID and Friends of the Earth (US), 18 August 2005; Letter from ACIDH (DRC), Nouvelle Dynamique Syndicale (NDS - DRC), RAID (UK), Friends of the Earth (US), and Environmental Defense (U.S) to Paul Wolfowitz, President World Bank Group, 8 July 2005.

¹⁰ Anvil Mining Limited, Annual Information Form for Financial Year ended December 31, 2004, p.4. Anvil Mining Limited (the "Corporation") was incorporated pursuant to the *Business Corporations Act* (Northwest Territories) under the name Dikulushi Resources Limited on January 8, 2004. The Corporation changed its name to Anvil Mining Limited on March 12, 2004.

¹¹ http://www.anvil.com.au/about_profile.shtml. Anvil Mining Limited was listed on the Toronto Stock Exchange on 2 June 2004 (see listing for Anvil at www.tsx.com) and on the Australian Stock Exchange on the same day (Australian Stock Exchange, Anvil Mining Limited - Admission to Official List, Market Release, 2 June 2004). The Corporation's registered and records office in Canada is given as 4908 – 49th Street, Yellowknife, Northwest Territories, Canada X1A 2N6 (Annual Information Form for Financial Year ended December 31, 2004). Anvil Mining Limited's website lists Canadian offices at 1 Place Ville-Marie, 28th Floor, Suite 2821, Montréal, Quebec, Canada QC H3B 4R4 and Suite 700, 357 Bay Street, Toronto, Ontario, Canada M5H 2T7. The address of Anvil Mining Limited's registered and head office in Australia is given as Level 2, 35 Ventnor Avenue, West Perth, WA 6005 (Annual Information Form). However, Anvil's website lists Anvil Mining Limited's address as Level 2, 38 Richardson Street, West Perth WA 6005, Australia (PO Box 1654, West Perth, WA, 6872, Australia). Anvil Mining Limited's Annual information Form lists subsidiary offices at 14 Lukafu, Quartier Golf, Lubumbashi, Democratic Republic of Congo (DRC). Anvil Mining Limited's website lists the address for Anvil Mining Congo SARL: 8034 Avenue Nyota, Quartier Golf, Lubumbashi, DRC.

¹² Diagram of corporate structure, Annual Information Form for Financial Year ended December 31, 2004, p.4.

¹³ Anvil Mining Limited, Consolidated Financial Statements as at December 31, 2004 and June 30, 2004 and for the six months ended December 31, 2004 and year ended June 30, 2004, Management's discussion and analysis of financial condition and results of operations, p.9. It is noted that DRC revenues and expenses relate to the Dikulushi Mine.

¹⁴ *Ibid.*, p.3.

¹⁵ Anvil Mining Limited, Consolidated Financial Statements to June 30, 2005 (unaudited).

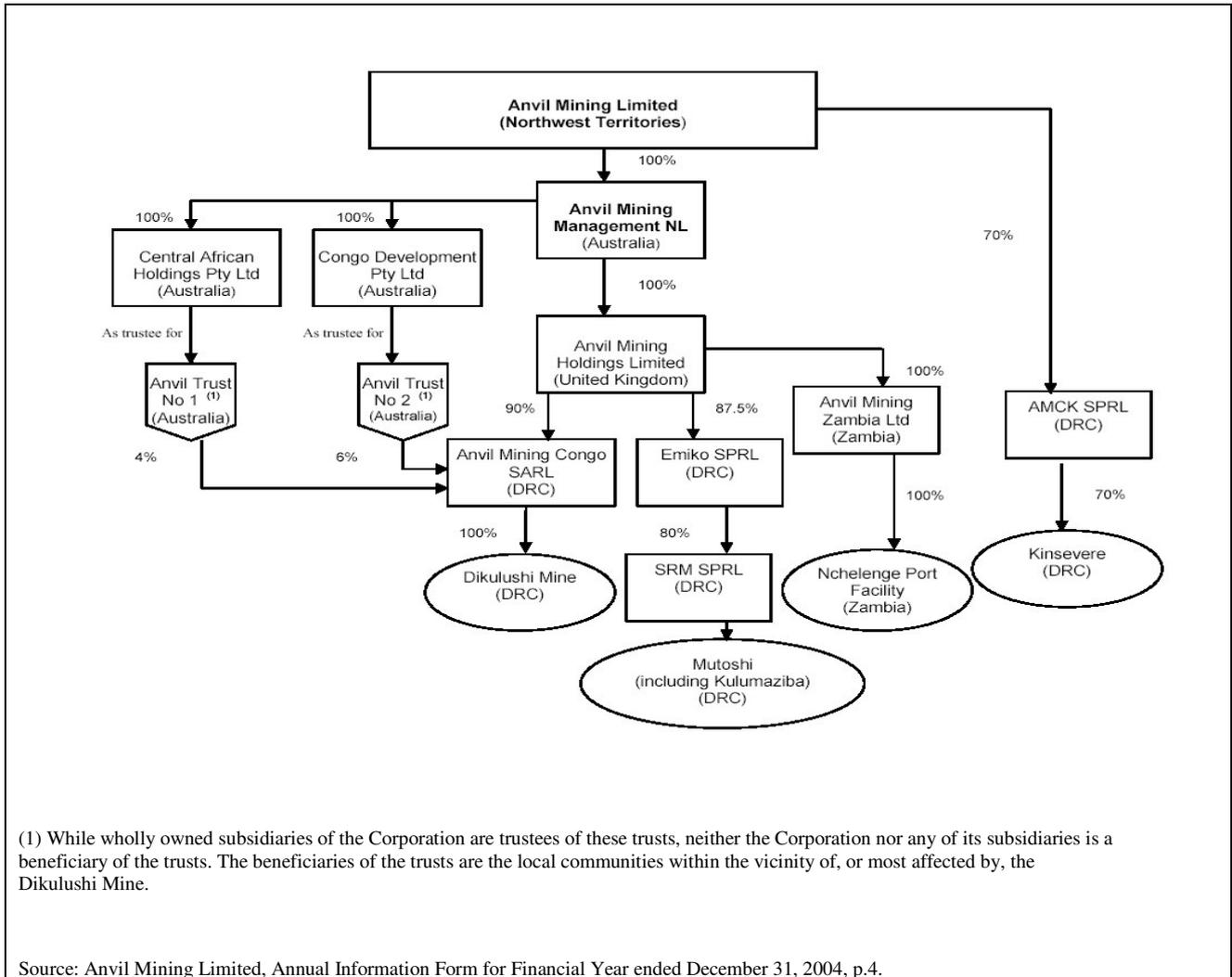
¹⁶ Consolidated Financial Statements as at December 31, 2004 and June 30, 2004; Consolidated Financial Statements to June 30, 2005 (unaudited).

¹⁷ Handout of Bill Turner's presentation to NGOs, Dikulushi Mine, 24 August 2005.

¹⁸ Anvil Mining Limited, Consolidated Financial Statements as at December 31, 2004 and June 30, 2004 and for the six months ended December 31, 2004 and year ended June 30, 2004, p.10.

0%; from the sixth through to tenth years of production, it is 16%, representing a reduction of 60% over the usual rate.

Anvil states: ‘One of the features of the project is a strong community program aimed at maximising local employment and training. The Company has developed improved water supplies, education facilities and medical services as part of a long term commitment to local communities.’¹⁹ At the same time, Anvil confirms that the mine life is ‘3 years for the open pit and potentially 3 years underground.’



¹⁹ http://www.anvil.com.au/prj_dikulushi.shtml.

Community support

Anvil describes how it supports the local community: ‘The Company holds an indirect 90% equity interest in Anvil Mining Congo s.a.r.l. (Anvil Congo) and, in addition, has administrative responsibility for the economic benefit of the remaining 10% equity interest, which is held in trust by the Anvil Group of companies for the social, economic and infrastructure development of the region of the Company’s activities at the Dikulushi Mine. Wholly-owned subsidiaries of the Company are the trustees of the trusts that hold the remaining 10%, giving the Anvil Group greater control over how this 10% interest is administered.’²⁰

According to Anvil,²¹

- The Company has provided the building and school equipment plus an annual contribution towards the administration of the school.
- At the port town of Kilwa, the Company has spent A\$200,000 [US \$152,000] refurbishing the community hospital.
- Roads, bridges and port facilities have improved transport in the area. At the same time, the Company has contributed community specific projects - particularly water supplies - to improve local facilities which are not linked to the mining operations.

Financing of community projects

However, it is unclear whether the trust receives 10% of net earnings from Dikulushi or else receives dividends in accordance with the trust’s 10% equity interest. Mr. Turner, in the *Four Corners* interview, states: ‘The net earnings of the company, the parent company was \$6 million, the earnings from the Decolushi [sic] operation were \$4.6 [in the year to June 2004] and it’s 10% of that 4.6 that we’re talking about.’²² He also states: ‘This [the community development trust] is a 10% equity, essentially a 10% equity interest in the company, which means that dividends, when they are distributed, 10% of the dividends that come out of the company go to this go to the local community programs.’²³ In his presentation to NGOs at Dikulushi in August 2005, Mr. Turner refers to Section 4 of the Anvil Mining Congo (SARL) Trust Deed Documentation which refers explicitly to the spending of Dividend Income for the benefit communities.²⁴ According to the company’s Annual Information Form,

Neither the Corporation nor Anvil NL has paid any dividends since inception. The Corporation does not anticipate that it will do so in the foreseeable future. The declaration of dividends on the Common Shares of the Corporation is within the discretion of the Corporation’s Board of Directors and will depend upon their assessment of, among other factors, earnings, capital requirements and the operating and financial condition of the Corporation. At the present time, the Corporation’s anticipated capital requirements are such that it intends to follow a policy of retaining earnings in order to finance further development of its business.²⁵

How then is the trust financed? Anvil has undoubtedly spent money on building the school and refurbishing the hospital, but where has this money come from? Mr. Turner explains that these projects are ‘being done before we actually have the money to do them, as would normally come from the 10% through a dividend distribution’.²⁶ What happens to payments into the trust when the company records a loss, as in the six months to June 2005?

Sustainability

In terms of the longer term sustainability of the projects, what happens when the Dikulushi mine closes, especially as its lifespan is estimated at just six years? While the company is to be commended for providing physical infrastructure – the school building and refurbishment of the hospital – how are the running costs of these facilities to be met? Is it accurate, as reported on Anvil’s website,²⁷ that children can study free of charge given that the company provides a contribution towards administration of the school? Even if children do not pay school fees at present, will they be required to do so in the future? Who will pay the wages of the teachers, doctors and nurses? How will the cost of text books, drugs and equipment be met?

²⁰ Anvil Mining Limited, Annual Report and Consolidated Financial Statements, to 31 December 2004, p.14.

²¹ http://www.anvil.com.au/congo_community.shtml

²² Four Corners taped interview with Bill Turner, full transcript, p.67.

²³ Four Corners taped interview with Bill Turner, full transcript, p.66.

²⁴ Handout of Bill Turner’s presentation to NGOs, Dikulushi Mine, 24 August 2005.

²⁵ Anvil Mining Limited, Annual Information Form for Financial Year ended December 31, 2004, pp.26 – 27.

²⁶ Four Corners taped interview with Bill Turner, full transcript, p.69.

²⁷ Dikulushi’s Customary Chief Lubebe is quoted: ‘Now we have an excellent school, where the children can study free of charge and families from surrounding villages can send their children to Dikulushi!’ (http://www.anvil.com.au/congo_community.shtml).

1. The UN's Account of the Kilwa Incident

Between 22 and 24 October 2004 a team from the Special Investigations Unit (SIU) of the Human Rights Division of MONUC, the organization established by the United Nations Security Council to monitor and maintain the cease-fire in DRC, was sent on a verification mission to Kilwa.²⁸

The field report of the SIU was completed in November 2004.²⁹ MONUC Kinshasa completed a report (hereafter 'the MONUC report') on the conclusions of the SIU, released to RAID in September 2005.³⁰ The following account of the Kilwa incident is taken from the latter report. The full text of the MONUC report (unofficial English translation) is reproduced as Annex 1.

The MONUC report describes how, 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 against the rebels. According to MONUC, the operation had been authorized by the Kinshasa authorities who bypassed the command of the Lubumbashi based 6th military region.³¹ Prior to the offensive, MONUC estimates that ninety per cent of the population had fled the fighting on 14 October 2004.³²

The FARDC action was aimed at crushing 'a poorly organised and poorly armed rebellion movement which occupied the town of Kilwa in the early hours of 14 October 2004.'³³ The rebellion 'was orchestrated by at least ten apparently naïve and ill-equipped persons' belonging to a hitherto unknown secessionist movement – Mouvement Révolutionnaire pour la Libération du Katanga (MRLK) – who managed 'to recruit some young people locally – estimated to less than 100 persons'.³⁴ The rebels were led by Alain Kazadi Makalayi, a 20 year-old fishermen from the town of Pweto.³⁵

In a confrontation lasting two hours, the FARDC did not sustain any casualties.³⁶ Afterwards the FARDC carried out house searches, which lasted until the afternoon of 16 October. On the evening of 16 October 2004, Alain Kazadi was arrested after receiving gunshot wounds to his hand and back.³⁷ Two prisoners, including Kazadi, later died while in hospital. According to the military they succumbed to their injuries.³⁸

During the operation, the FARDC carried out summary executions and other human rights violations.³⁹ MONUC found that the FARDC were also responsible for acts of pillage, extortion, and arbitrary detention.⁴⁰ MONUC reports that the investigating team were able to gather some information related to the death of 73 people, at least 28 of whom appeared to have been summarily executed.⁴¹ MONUC notes that it received eyewitness and survivor reports of summary executions.⁴² After MONUC's investigation, ASADHO/Katanga estimated in its January 2005 'Rapport sur les violations de droits de l'homme commises a Kilwa au mois d'octobre 2004' that more than 90 people may have been summarily executed

²⁸ MONUC report, paragraph 1.

²⁹ MONUC, Special Investigations Unit, 'Report of the Special Investigation into allegations of summary executions and other human rights violations by FARDC in Kilwa (Katanga Province)', 10 November 2004.

³⁰ *Intra*, fn 1.

³¹ MONUC report, paragraph 16.

³² MONUC report, paragraph 15.

³³ MONUC report, paragraph 2.

³⁴ MONUC report, paragraph 3.

³⁵ MONUC report, paragraph 12.

³⁶ MONUC report, paragraph 17.

³⁷ MONUC report, paragraph 18.

³⁸ MONUC report, paragraph 30.

³⁹ MONUC report, paragraph 17.

⁴⁰ MONUC report, paragraph 2.

⁴¹ 'The military authorities at Kilwa and the Governor of Katanga stated that 24 – 30 members of a militia had been killed and that the local civilian authorities had no knowledge about the number of dead. Kilwa hospital sources, who had coordinated the burial of the bodies, denied to MONUC that they had information on this subject. It is worth noting that before meeting the MONUC team, these sources had been called to a meeting with Colonel Ademars. According to information from independent sources 73 people had been found dead, 28 of whom had been summarily executed.' (MONUC report, paragraph 24). Of the 73 victims, MONUC records that: 11 of them drowned on the lake trying to flee from Kilwa; that 34 bodies were allegedly found and buried by the inhabitants of Kilwa (among them there 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. (*Idem*).

⁴² MONUC report, paragraphs 26 – 29.

by the FARDC.⁴³ The MONUC team received information that the military allegedly buried an undetermined number of bodies, principally the victims of summary executions.⁴⁴

On 17 October 2004 order was restored. Katumba Mwanke, an advisor to the President, the Governor Kisula Ngoy, and the commander of the 6th military region, visited the island of Nshimba where a large part the population had fled for safety. They encouraged the displaced people to return to Kilwa.⁴⁵

MONUC describes how, on one level, the attack was declared by Kazadi to be 'part of a much larger scheme planned by local pro-independence movements'.⁴⁶ Any wider secessionist attack did not materialise. However, the MONUC report also describes how local feeling towards Anvil figured in Kazadi's actions:

Kazadi also knew that he could count on some frustration prevalent amongst the local community in relation to Anvil Mining's activities. This mining company appears to exploit the rich silver/copper mine in Dikulushi with the presumed support of certain members of the presidential team who have links with Katanga businessmen. The company was indeed accused by parts of the population of employing non-native persons and of not contributing enough to the improvement of the level of life of the local community.⁴⁷

On his way [to Anvil's petrol depot in Kilwa], Kazadi stopped at the market and held a public meeting during which he proclaimed the independence of Katanga. He stressed that the time of "pocketing money from the mines" was over for President Kabila and Katumba Mwanke – one of the president's advisers.⁴⁸

At Anvil Mining's petrol depot, Kazadi asked the employees to help them to contact the "white people" in the company at Dikulushi, located some 30 kms to the north of Kilwa. However, the insurgents insisted on the fact that they had not come to disturb the company's activities.⁴⁹

MONUC's reporting of how Anvil's activities informed Kazadi's actions should be considered alongside the views of the company. On 15 October 2004, at the time of the Kilwa incident, Anvil issued a news release which stated:

In discussions Company security personnel had with the leader in Kilwa yesterday, it was clearly stated that the rebel group had no issues with Anvil, Anvil expatriate personnel, nor the Dikulushi Mine. The rebel group appears to be a small band of disaffected individuals seeking representation.⁵⁰

The MONUC report states:

MONUC has been in contact with the mining company Anvil Mining concerning allegations according to which the FARDC appear to have used the company's logistic and at least three of the company's employees during their counter-offensive in Kilwa. As expressly stated in the *United Nations Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, and in the *OECD (Organisation for Economic Co-operation and Development) Guidelines for Multinational Enterprises*, it is crucial that activities of international investors be undertaken in conformity with the protection of human rights. The present report includes the conclusions reached by MONUC following its investigation on the ground and the discussions it had with the company Anvil Mining.⁵¹

⁴³ ASADHO/Katanga's figures are cited by MONUC. See MONUC report, paragraph 25.

⁴⁴ MONUC report, paragraph 24.

⁴⁵ MONUC report, paragraph 19.

⁴⁶ MONUC report, paragraph 23.

⁴⁷ MONUC report, paragraph 21. MONUC adds a foot note to this paragraph: 'In its press release of 21 June 2005, Anvil said that the company was involved in two community projects, a school, and the renovation of the local hospital.'

⁴⁸ MONUC report, paragraph 13.

⁴⁹ MONUC report, paragraph 14.

⁵⁰ Anvil Mining Limited, 'Advice on rebel activity in village of Kilwa, DRC', *News Release*, 15 October 2004.

⁵¹ MONUC report, paragraph 6.

2. Allegations concerning Anvil Mining contained in the UN Report

The MONUC report into the Kilwa Incident contains a section on allegations concerning Anvil. A verbatim translation follows:

VI. Allegations concerning the multinational company Anvil Mining

36. 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 FARDC⁹. 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.

⁹ 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.

37. In October 2004, the Commander of the 6th military region in Lubumbashi informed MONUC that the intervention of the FARDC to bring safety back to Kilwa was made possible thanks to the logistical assistance given by Anvil Mining. On another occasion, during an interview made with an Australian television channel (ABC) on 6 June 2005, the President and CEO of Anvil Mining, M. Bill Turner, responded to a question concerning the use of Anvil Mining vehicles by saying “so what?”. He acknowledged that Anvil Mining had provided logistic to the army, following a “request from the army of a legitimate government”. He also added: “We helped the military to get to Kilwa and then we were gone. Whatever they did there, that's an internal issue”¹⁰. According to a part of the interview which was not televised, Mr. Turner would have added: “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 ... could we just sit there and let these guys walk past the mine. I don't think so »¹¹.

38. The United Nations Security Council Resolution 1565 stresses the importance of creating an efficient and transparent monitoring system with regard to the exploitation of natural resources in the Democratic Republic of Congo. As stated in the *United Nations Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, as well as in the *OECD (Organisation for Economic Co-operation and Development) Guidelines for Multinational Enterprises*, it is crucial that the activities of international investors are conducted in conformity with the protection of human rights. The United Nations Norms require in particular that “transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law”¹².

39. As a part of its mandate, MONUC contacted Anvil Mining in order for the company to explain the use being made of the company's logistic and personnel by the Armed Forces of the Democratic Republic of Congo (FARDC) during the FARDC's counter-offensive in Kilwa and the crimes that then followed. Anvil Mining cooperated to clarify its presumed involvement and informed MONUC that the logistic, 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, the Colonel Ademars in Pweto and the governor of Katanga in Lubumbashi. Anvil Mining referred in particular to a previous incident dating of March 2004 during which soldiers of the FARDC had taken vehicles of the company Anvil at gun point and had attacked an employee of Anvil¹³. According to Anvil Mining, the company would have objected on 16 October 2004 to the presumed requisitions of October 2004, to the Colonel Ademars at the local level and to the territory Administrator in Kilwa.

¹⁰ The interview being held in English, what follows is the original text: “...*We helped the military to get to Kilwa and then we were gone. Whatever they did there, that's an internal issue.*” In other parts of the interview, Mr. Turner added: “*They requested assistance from Anvil for transportation. We provided that transportation so that they could get their soldiers down to Kilwa*”. To the question of how many vehicles Anvil were being provided he answered: “*What difference does it make how many vehicles? There are a group of soldiers, and whatever number of vehicles was necessary to move these guys I guess we sent up there and they moved them down*”.

¹¹ The interview being held in English, what follows is the original text: “...*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 kilometer trip down to Kilwa ... could we just sit there and let these guys walk past the mine. I don't think so*”.

¹² United Nations Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human, Paragraph C.3, E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003.

¹³ See also the press release of Anvil Mining of 21 June 2005.

40. 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 2004¹⁴, 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”¹⁵.

41. In order to shed some light on this issue, the MONUC has asked Anvil Mining to have access to the company’s internal investigative report concerning the events in Kilwa, including the statements made by the employees who would have been requisitioned by the army. But Anvil Mining declined to give the report to MONUC due to legal proceedings envisaged against the company. Indeed, following the documentary of 6 June on the ABC television, the Australian Federal Police was approached by an Australian law firm acting for a coalition of international and national NGOs in order for the AFP to investigate the presumed involvement of Anvil Mining in the crimes perpetrated in Kilwa and to investigate allegations of corruption. The latter allegations relate to the presumed relationship existing between Anvil Mining and Mr. Katumba Mwanke, a close adviser of the President of the Democratic Republic of Congo, Mr. Joseph Kabila. Mr. Mwanke is included in the list of persons against whom the Expert Group on the illegal exploitation of natural resources and other types of richness in the Democratic Republic of Congo recommends a prohibition of travel and financial restrictions, in its report of October 2002 (S/2002/1146). During the interview of 6 June 2005 with the ABC television, the President and CEO of Anvil Mining, Mr. Turner has admitted that Mr. Katumba Mwanke had in the past been a representative of the Congolese government in the Board of Directors of Anvil Mining (in fact, this was the case for the period of 2001 to 2004); the company also admitted that Anvil Mining had paid Mr. Mwanke some fees for being present at meetings and that the headquarters of Anvil Mining in Lubumbashi are located in a rental property belonging to Mr. Mwanke.

¹⁴ The « *Report for Quarter ended December 31, 2004* » states that “the government and military response on both provincial and national levels was rapid and supportive of the prompt resumption of operations” and it does not mention the presumed requisitions done by the FARDC.

¹⁵ Anvil Mining has explained the apparent contradiction between their report of December 2004 and the events in Kilwa – including the presumed requisition of its vehicles and of its employees- by saying, in its letter of 20 June 2005 to MONUC that the report was « a dry response to compulsory reporting requirements of the financial markets ». The report – Anvil Mining insisted - was produced prior to them having an appreciation of the seriousness of these events and in no way reflects the deep sadness they feel following the deaths that occurred”.

3. Anvil's response to the Kilwa incident and the key questions that remain

The Australian Broadcasting Corporation's *Four Corners* documentary entitled 'The Kilwa Incident' is referred to by MONUC.⁵² The program was broadcast on Australian national television on 6 June 2005. The program included a videotaped interview with the Chief Executive Officer of Anvil Mining, Bill Turner. The interview was not broadcast in its entirety, but the full transcript is available. Further responses given by Mr. Turner – and in addition to those quoted directly by MONUC in its report – are reproduced below in the right hand column.

Reference is also made in the same column to news releases and public reports issued by Anvil, to information that RAID acquired in the course of interviews and correspondence with Anvil's senior management, as well as to material from company presentations and discussions conducted with Anvil during an NGO visit to Dikulushi and Kilwa in August 2005.

The account given by Mr. Turner about the Kilwa incident in the *Four Corners* interview, when compared with the company's subsequent responses and with MONUC's reporting of the company's explanation of its actions, raises a number of questions. These questions are noted in the left hand column, alongside the statements by Anvil or its staff that gave rise to them.

In a news release issued the day after the *Four Corners* program was broadcast, Anvil describes the allegations made against it as 'deplorable, and without foundation.'⁵³ The company states that 'Anvil had no knowledge of what was planned for the military operation, and was not involved in the military operation in any way.'

⁵² MONUC report, paragraph 37.

⁵³ Anvil Mining Limited, 'Anvil Mining Limited Response to Television Report of June 6, 2005', *News Release*, 7 June 2005.

(a) The ‘*présumées réquisitions*’ and the use of Anvil’s transport by the FARDCⁱ

Key questions

‘*Présumées réquisitions*’

ACIDH, in its report of its field visit to Kilwa and the surrounding area in September 2005, gives details of an interview with the Sector Chief of Kilwa, M. Mucheki Kalunga, and his Administrative Secretary, Emmanuel Mwamba. While stating that the massacre and crimes committed in Kilwa are the sole responsibility of Colonel Ademar and that Anvil should not be criticised, the chief continues:

‘...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., that had been the situation for more than two years.’ⁱⁱ

- Does the company wish to confirm or deny this assertion?

In his interview for the *Four Corners* program, Mr. Turner does not state at any point that the planes or Anvil vehicles were requisitioned. He refers to ‘requested assistance’, to having ‘helped the military get to Kilwa’ to the fact that ‘whatever number of vehicles that were necessary...we sent up there.’ Anvil’s press release of 15 October 2004, issued as events in Kilwa were unfolding, made no reference to the requisitioning of its vehicles.

- Why didn’t Mr. Turner make it clear in either the *Four Corners* interview or in Anvil’s press release at the time of the Kilwa incident that transportation had been requisitioned?
- As far as RAID, ACIDH and ASADHO/Katanga are aware, it was not until after the *Four Corners* program was broadcast that Anvil made any public reference to its vehicles and chartered planes having been commandeered. Why not?

Anvil has still not provided a full account of the precise details and the chronology of the requisitioning. In his discussion with RAID on 24 August 2005 at Dikulushi, Mike O’Sullivan, Anvil’s Vice President for Development, said that he received a communication from the military commander in Pweto requesting Anvil vehicles; a more formal request for Anvil to release its vehicles and to make seats available for soldiers on the planes was made later by the Governor of Katanga. RAID has been informed directly by Mr. Turner that Mr. O’Sullivan was in Australia at the time of the Kilwa incident.ⁱⁱⁱ MONUC reports that Anvil informed it that the requests were made by the High Commandant of the 6th military region, Colonel Ademars in Pweto, and the governor of Katanga in Lubumbashi.

- What was the nature or form of each of the requisitions or requests referred to by the company? Was each requisition referred to verbal or written?

Company statements and responses

‘*Présumées réquisitions*’

To RAID, ACIDH and ASADHO/Katanga’s knowledge, the first explicit public reference to the fact that 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 after the *Four Corners* program had been broadcast.^{viii} A subsequent Anvil news release, dated 21 June 2005, made public reference, again for the first time, to the fact that Anvil’s transport had been commandeered by the army:

Following the taking of the town of Kilwa by rebels in October 2004, the Military of the DRC Government had commandeered Anvil vehicles, drivers and chartered aircraft to assist the military in suppressing the rebel insurgency. Given Anvil’s previous experience with rebel activity in the Kilwa area, during which Anvil’s vehicles were, after initial resistance, commandeered at gunpoint, Anvil had absolutely no choice but to provide the transport required by the DRC Military and had no reason to suspect that this would involve anything other than the lawful enforcement of the laws of the DRC. Anvil had no knowledge of what was planned for the military operations in any way.^{ix}

On 24 August 2005, during the NGO visit to Dikulushi, Anvil produced a letter from the Governor of Katanga, dated 11 June 2005 stating: ‘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’.^x According to the accompanying Anvil report the letter confirmed ‘that the vehicles and airplane seats were requisitioned during the Kilwa incident’.^{xi} In the same document Anvil makes reference to a provision of the Congolese Law: Ordinance Law 112/FP of 11 June 1940 concerning requisition.^{xii}

- Given that several requisitions or requests appear to have been made, who at the company received them?
- Was the communication from the military commander in Pweto to Mr. O'Sullivan a telephone call or fax made to him at Anvil's Perth office, or received by him whilst he was at the Perth office?
- With whom within the Anvil organization did Mr. O'Sullivan discuss the request for assistance?
- Was Mr. O'Sullivan involved in decision to accede to the request for assistance?
- Who else with Anvil was involved in the decision?
- Given that RAID interviewed Pierre Mercier one month after these events, why did he omit to mention then that he had received 'firm instructions' from the Congolese authorities to provide transport?
- Can the company produce any documents that refer to the requisition, either from the Congolese authorities, or communications from the company itself to the same authorities, immediately before, during or after the FARDC offensive at Kilwa against the insurgents?

The letter from the Governor of Katanga that Anvil has produced to confirm the requisition is dated 11 June 2005, i.e., eight months after the Kilwa incident, but only five days after the Four Corners program was broadcast.

- Why did the company wait until then before producing such a letter, especially in the light of MONUC's investigation into the incident?
- When did Anvil inform MONUC that requests for logistics, air transport and drivers 'could not be refused' and that it had protested to the authorities within two days about the alleged requisitions?

In the *Four Corners* interview, Mr. Turner When asked about what discussions he had with the authorities about what should be done about the Kilwa insurgency, replied:

'I didn't have any discussions with any authorities. It was our, th-the thing was really run by um a chap that we had working with us there, by the name of Pierre Mercier at the time, um a French Canadian ah chap who was really our sort of administrative um head in Logumbushi [sic] and ah he um he had a he he ac he was actually in Kinshasa when it happened and um he ended up down in Logumbushi [sic] and I I'm not sure what the communication was and who it was with but ah I assume we were contacted by the military, we were probably contacted by the governor's office'

RAID interviewed Pierre Mercier in Anvil's office in Lubumbashi on 22 November 2004. The Kilwa incident was discussed at length in the interview, which lasted almost two hours. At no time during the interview Mr. Mercier say that he had been given 'firm instructions' to provide transport from the military nor did he in any way suggest that transport had been requisitioned. A copy of RAID's minutes of this meeting is attached as Annex 5.

On 24 August 2005 at Dikulushi mine, Mike O'Sullivan told RAID that he had received a communication from the military commander in Pweto requesting Anvil vehicles. Maybe we could have refused, but given the gravity of the situation as it appeared to us at the time, and given our previous experience in March, we felt we couldn't refuse.^{xiii}

In the *Four Corners* interview, Mr. Turner, in response to a question asking where he was at the time [that the Kilwa incident began] and how he learnt of events, replied:^{xiv}

'Ah I was in Australia and I got a phone call from um from someone.'

Mr. Turner continues:

'it was actually Mike O'Sullivan who who rang me and actually um I can't remember where Mike was now but um Mike is the New Zealand mining engineer who actually developed Decolushi [sic],

um he's been um well he is a a key player uh at the Decolushi mine. He wasn't on site at the time...'

The use of Anvil transport

ACIDH, in the report of its field visit to Kilwa and the surrounding area in September 2005, records the following testimony:

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's witness statement (identity withheld) taken by ACIDH in its field visit to Kilwa and the surrounding area, September 2005].^{iv}

The MONUC report alleges that Anvil vehicles 'were used to transport looted goods as well as bodies – including the bodies of the victims of summary executions – to the site at Nsensele where MONUC identified two mass graves and one individual grave.' The MONUC report also states that Anvil denied that its vehicles 'had been used to transport bodies or looted goods'.

- Given that Anvil has stated that 'at the time, Anvil had no knowledge of human rights abuses' and that Mr. Turner has denied knowledge of the military action, stating '[w]e helped the military get to Kilwa and then we were gone, whatever they did there, that's an internal issue' how can it know that its vehicles were not used to transport bodies?

In a transcript of video interviews of traditional leaders conducted by local NGOs, testimony is provided by the Chief of the Kilomba Grouping:^v

'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 (doctors without borders) demand which prevented the bad smell.'

The use of Anvil transport

In the *Four Corners* interview, when asked about eye witness accounts telling of how Anvil vehicles 'were used to transport people who were arrested to the places where they were executed', Mr. Turner stated that he had 'no knowledge of that'.^{xv}

➤ Did Anvil help to bury bodies?

Anvil confirms that 25 staff were evacuated from the Dikulushi mine, using charter planes via the airport at Dubie, on 14 October 2004 and 50 more were evacuated on the following day.^{vi} Anvil also confirms that soldiers were flown in on the ‘back loading’ or return journeys of these flights and has acknowledged to MONUC that the planes chartered by the company to evacuate its personnel were used on 14 and 15 October to transport approximately 150 soldiers in the area of operation. Mr. Turner stated that the planes used would probably carry 25 people.^{vii}

- Given the capacity of the plane(s) used in the evacuation, would it not be the case that more flights would have been needed to fly in the soldiers than to evacuate the staff?
- Where were the FARDC soldiers flown into the Kilwa area from? To which airfield(s) were they flown?
- Why was the requisition order for the planes issued to Anvil and not to ITAB, the charter company?
- Did Anvil object to the use of Anvil chartered planes by the FARDC to transport detainees, given that their use occurred after FARDC forces had committed human rights violations in Kilwa? Did Anvil immediately inform MONUC or any other official bodies that planes it had chartered were being used by FARDC forces for this purpose?

In an interview for the *Four Corners* program, Mr. Turner confirms the use of planes, chartered by Anvil, to fly in FARDC soldiers from Lubumbashi. According to Mr. Turner, the planes had been used to evacuate Anvil staff after news of the uprising at Kilwa. Mr. Turner states:

‘I think they [FARDC soldiers] were flown in on the back-loading, when the plane went up there to get our people, um the plane would have had soldiers on, we took our people out.’^{xvi}

In a separate interview, a senior Anvil manager describes the same scenario.^{xvii} Mr. Turner, in response to a question on whether the planes were used to transport detainees from the uprising back to Lubumbashi, replies that people did go back on the planes that Anvil was sending people out on.^{xviii} When pressed on whether these flights transported people who were arrested, Mr. Turner states: ‘I think they did, yeah. Again a request from the military of the legitimate government of the country.’^{xix}

ⁱ MONUC report, paragraph 39.

ⁱⁱ ACIDH-RAID report, ‘Reactions of the Congolese Local and Provincial Authorities’, Sector Chief of Kilwa, M. Mucheki Kalunga, and his Administrative Secretary, Emmanuel Mwamba, interview 15 September 2005, p.9.

ⁱⁱⁱ E-mail from Bill Turner to RAID, 30 September 2005.

^{iv} See ACIDH-RAID report, p. 19 (original in French).

^v LICOF, ORMES, AAM, AJAC, ‘Transcript of video interviews of Traditional Leaders in Kilwa Region conducted by Lubumbashi NGOs,’ 23 July 2005, p.2.

^{vi} Anvil Mining Limited, ‘Advice on rebel activity in village of Kilwa, DRC’, *News Release*, 15 October 2004.

^{vii} Four Corners taped interview with Bill Turner, full transcript, p.51.

^{viii} Anvil Mining Limited, ‘Anvil Mining Limited Response to Television Report of June 6, 2005’, *News Release*, 7 June 2005.

^{ix} Anvil Mining Limited, ‘Anvil Confirms Denial of Unfounded Allegations’, *News Release*, 21 June 2005.

^x Letter dated 11 June 2005 (ref No 10/0844/CAB/GP/KAT2005) from Urbain Kisula Ngoy, the Governor of Katanga to Anvil’s General Manager, Lubumbashi

^{xi} Anvil Mining Limited: Report on the Visit by NGOs to the Dikulushi Mine, DRC 30 August 2005

^{xii} Petition of Kilwa Traditional Leaders, June 2005

^{xiii} RAID’s notes of the account of the Kilwa incident given by Mike O’Sullivan, Anvil’s Vice President for Development, at Dikulushi Mine, DRC, 24 August 2005 (reproduced as Annex 4).

^{xiv} Four Corners taped interview with Bill Turner, full transcript, p.47.

^{xv} Four Corners taped interview with Bill Turner, full transcript, p.59.

^{xvi} Four Corners taped interview with Bill Turner, full transcript, p.50.

^{xvii} Pierre Mercier, then Anvil’s senior manager in the DRC, told RAID at a meeting in the company’s headquarters in Lubumbashi: ‘Anvil leased planes took people to Lubumbashi, so they were empty and able to carry soldiers back.’ (RAID: Interview with Pierre Mercier, Lubumbashi, 22 November 2004).

^{xviii} Four Corners taped interview with Bill Turner, full transcript, p.64.

^{xix} Four Corners taped interview with Bill Turner, full transcript, p.64.

(b) *The presence of Anvil security staff*

Key questions

'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 HQ 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) taken by ACIDH in its field visit to Kilwa and the surrounding area, September 2005].^{xx}

Anvil has itself already confirmed that discussions took place between Company security personnel and the rebel leader in Kilwa on 14 October 2004. Anvil 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. As noted above, MONUC refers to information it has '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.'^{xxi} An

Company statements and responses

When asked in the *Four Corners* interview how he learnt of events at Kilwa, Mr. Turner replies:
^{xxiii}

'it was actually Mike O'Sullivan who who rang me and actually um I can't remember where Mike was now....He wasn't on site at the time, um I think he did you meet Cedric when you were there?'

Mr. Turner continues, explaining who Cedric is:^{xxiv}

'Ah one of our security people, sort of, in those situations the the authority passes to the security person and it's up to the security person to sort of um you know call the shots on what we do with people, where we move people and so on.'

In its news release of 15 October 2004, Anvil states:

The Company has maintained security staff including the Group Security Manager and the Mining Manager on site in order to monitor the situation...^{xxv}

eyewitness to events in Kilwa on 16 October 2004, interviewed by the Congolese Human Rights NGO ACIDH, also refers to the presence of Anvil's head of security in the grounds of the Hotel Kabyata (where the FARDC had set up its HQ and was holding a number of detainees). An eyewitness also refers to seeing Anvil's head of security leave the hotel compound on a motorbike to follow a pick-up, loaded with detainees, and driven by a FARDC soldier accompanied by four other soldiers. The witness describes how Anvil's head of security returned moments later to the Hotel compound, followed by the empty pick up and 'told the Colonel that a serious accident had occurred a Nsensele (3 km from Kilwa on the road towards Dikulushi) and all the detainees had been killed' and how the victims 'had been buried on the spot'. Local people told ACIDH that they knew the Anvil's head of security very well by sight. He had worked at Dikulushi for three years training the Congolese security guards.

In the transcript of video interviews conducted by local NGOs, testimony is provided by the President of the Group of Volunteers of Kilwa:^{xxii}

'When I came back, I was arrested by at least 60 soldiers who killed on the spot a man tied up to a tree, two others named respectively Kisimba Jerome and Papa Mwape. When going to the cemetery, the lorry made an accident and some many others died.'

- Who were Anvil's Group Security Manager and the Mining Manager at the time?
- On what dates and at what times were Anvil security personnel in Kilwa from 14 October onwards?
- Did Anvil security personnel, at any stage, accompany or follow FARDC soldiers?
- Did Anvil security personnel travel along the road from Kilwa to Dikulushi through Nsensele? If so, on which days did they travel along this road?
- Did Anvil security personnel witness the loading of detainees into an Anvil pick up at the Hotel Kabyata on 16 October 2004?
- Did Anvil security personnel follow this pick up, driven by an FARDC soldier accompanied by other soldiers, and witness an accident at Nsensele in which the detainees were killed and then buried on the spot?
- Did Anvil security personnel meet and speak to Colonel Ademar at the Hotel Kabyata immediately before, during or after the FARDC counter-offensive?
- Did Anvil security personnel arrange for deliveries of foodstuffs by truck to the hotel compound?

Anvil's news release of 15 October 2004 also states:

Anvil security personnel have talked with the leader of the rebel group, who has advised that his group has no intention of taking over the Dikulushi Mine.

A further reference is made in the same news release to discussions between company security personnel and the rebel leader in Kilwa on 14 October 2004. Mr. Turner, in the *Four Corners* interview, also confirms that '[w]e then had our security guys go down and talk ah to the rebel leader'.^{xxvi}

^{xx} See ACIDH-RAID report, p. 2 (original in French).

^{xxi} MONUC report, fn.9.

^{xxii} LICOOF, ORMES, AAM, AJAC, 'Transcript of video interviews of Traditional Leaders in Kilwa Region conducted by Lubumbashi NGOs,' 23 July 2005, p.3.

^{xxiii} Four Corners taped interview with Bill Turner, full transcript, p.47.

^{xxiv} *Ibid.*, p.48.

^{xxv} Anvil Mining Limited, 'Advice on rebel activity in village of Kilwa, DRC', *News Release*, 15 October 2004.

^{xxvi} Four Corners taped interview with Bill Turner, full transcript, p.43. See also pp. 45 – 46.

(c) Anvil's knowledge of events

Key questions

There is some uncertainty about what Anvil Managers knew about the Kilwa incident and when they knew it. The extent to which, if any, Anvil omitted to report the human rights violations that had occurred during the Kilwa incident to MONUC or to relevant embassies, needs to be clarified.

- Given that Anvil had monitored events and communicated with the military about the uprising and had suspended operations at the Dikulushi mine because of security concerns, and given its rapid recommencement of its operations in the area, is it in fact the case that the company neglected to monitor the situation in the immediate aftermath of the Kilwa incident?

Anvil has confirmed 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'. This suggests that the company and military were exchanging information about unfolding events and the security situation. Anvil has also stated that it left security personnel behind to 'in order to monitor the situation'.

- Is it in fact the case that the company was only learning that the Kilwa incident was 'a terrible event' eight months later in June 2005?

Mr. Turner makes reference to the presence 'on site all the time' of Congolese army intelligence personnel at the Dikulushi mine (see section (f) below).

- What was the purpose of having army intelligence personnel on site?
- Was there any exchange of information between the company and army intelligence personnel at the mine during and in the aftermath of the Kilwa incident in October 2004?

On the day the FARDC counter-offensive began, Anvil issued a news release stating that it expected 'the situation to be resolved within the next 72 hours' and confirming that '[t]he DRC Government has advised Anvil they are moving quickly to return the situation to normal.'

- Which individuals, from the military and Anvil mining were involved in the communications referred to in Anvil's news release of October 2004, and what precisely was discussed?

The MONUC report suggests that a number of Anvil Mining employees would have been in a position to have witnessed at least some aspects of the FARDC operations: 'MONUC has confirmed that three Anvil Mining employees drove the vehicles used by the FARDC...'

Company statements and responses

Anvil's news release of 23 August 2005 confirmed 'its rejection of allegations that it had **knowledge of** [emphasis added], or provided assistance to, the Democratic Republic of Congo (DRC) armed forces (known as FARDC), in the committal of any human rights violations during the suppression of a rebel insurgency in the town of Kilwa in October, 2004'.^{xxxii}

When asked in the *Four Corners* interview for his view on how the FARDC re-established control in Kilwa, Mr. Turner replied that he had 'no sort of intimate knowledge of how they achieved it'.^{xxxiii}

Anvil's press release of 21 June 2005 also states:

'Although at the time, Anvil had no knowledge of human rights abuses, we are now learning, it was a terrible event. The climate of fear and retribution that exists in this strife-torn part of the world means that it takes a considerable amount of time for any party to obtain all information that relates to such events as occurred at Kilwa.'

In the *Four Corners* interview, Mr. Turner refers to communications between Anvil and the Congolese military about the 14 October 2004 uprising in Kilwa:

There would have been quite a lot of communication going on as to what the situation was, the military wanting to find out from us what we knew of it and we were wanting to find out from them what sort of risk this posed for the mining operation and the people, particularly the people at the mining operation.^{xxxiv}

The company maintained security staff on site 'in order to monitor the situation' and security personnel from the company held discussions with the rebel leader in Kilwa.^{xxxv}

In its press release of 15 October, on the day the FARDC counter-offensive began, Anvil states:

'The Company expects the situation to be resolved within the next 72 hours. The DRC Government has advised Anvil they are moving quickly to return the situation

- If this is correct, did these drivers – as might be commonly assumed because of their positions as company employees responsible for Anvil vehicles – report their experience of events to Anvil managers?

to normal.^{xxxvi}

In ACIDH-RAID's September 2005 report of ACIDH's field visit to Kilwa, further details are given of the interview with the Sector Chief of Kilwa and his Administrative Secretary:

In response to the question of whether Anvil's managers should 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.^{xxvii}

Anvil employs 621 Congolese nationals and 27 expatriate staff. By its own reckoning, the company estimates that its local employees 'support approximately 6,000 other locals'. The Company also confirms that it 'draws approximately one third of its workforce from the town of Kilwa, transporting approximately 200 staff from Kilwa to the mine every day.' Anvil has a compound in Kilwa as a base for its transport of concentrate from the mine at Dikulushi across Lake Mweru for onward transit through Zambia.^{xxviii} Between four and six truckloads make the outward and return journey, passing through Kilwa twice each day. Hence some Anvil personnel are employed in Kilwa itself; other Anvil employees pass through Kilwa on a daily basis; yet more Anvil employees live in Kilwa, but work at the Dikulushi mine. Anvil personnel returned to Kilwa on 17 October 2004, just two days after the FARDC counter-offensive, and mining at Dikulushi recommenced on 18 October 2004.^{xxix}

- Again, is it therefore in fact the case that Anvil, through its employees who live and work in the town, knew nothing in the days during and after the FARDC counter-offensive about the killing of civilians, the torture of detainees, the looting of property, i.e., human rights abuse of the type later reported by MONUC?

Anvil prides itself on having close and positive relations with the local community. Local civil society organizations, in a meeting with RAID and other NGOs in Kilwa, explained how they raised issues for discussion with the company through Gédéon Masangu, the former Administrator of the Territory and the regional representative of the Ministry of the Interior, and now Anvil's Public Relations Officer. Mr. Gédéon Masangu lives in Kilwa.

- As a Kilwa resident and senior Anvil employee, did not Mr. Gédéon Masangu know about the killing of civilians, the torture of detainees, the looting of property – i.e., human rights abuse of the type later reported by MONUC – either through his own experience of Kilwa in the aftermath of the massacre or through his contacts with local residents?
- And if so, did not Mr. Gédéon Masangu, as Anvil's public

relations officer, communicate what he knew at the time about the Kilwa incident to other senior Anvil managers?

According to the MONUC field report, its investigative team were able to locate and visit three graves, including two mass graves and one individual grave on the outskirts of Kilwa. One grave allegedly contains the bodies of 13 victims of summary executions. The other two graves allegedly contain eight bodies, although MONUC did not obtain clarifications about the cause of death. MONUC specifically refers to Nsensele as the location of the three graves. Nsensele is 3km from Kilwa on the road to the Dikulushi mine.

- Again, is it in fact the case that either Anvil was unaware of the existence of these mass graves or else did not question whether their existence raised concerns about the perpetuation of human rights violations by FARDC forces?

In every village visited by RAID during its field trip to Kilwa and Dikulushi, residents knew about the massacre in October 2004 and could provide details about military atrocities. Local people were well aware of the existence and location of mass graves: these were shown to the MONUC investigating team, to the Four Corners journalists and also to RAID, ACIDH and ASADHO/Katanga.

MONUC has confirmed that, as part of its mandate, it contacted Anvil Mining 'in order for the company to explain the use being made of the company's logistic and personnel by the Armed Forces of the Democratic Republic of Congo (FARDC) during the FARDC's counter-offensive in Kilwa and the crimes that then followed' and that 'Anvil Mining cooperated to clarify its presumed involvement...' However, Anvil has stated publicly that it was 'not contacted by the UN in relation to the incident other than to confirm the security situation in the Kilwa area.'

- What was the date of first contact between the MONUC investigating team and Anvil?
- Will the company provide a complete record of all its contacts with MONUC?
- What was the nature of the discussions between MONUC and Anvil? Does the company maintain that only 'the security situation' was discussed when MONUC refers to seeking Anvil's explanations of the use of its logistic and personnel by the FARDC in its counter-offensive 'and the crimes that then followed'?

Anvil states that it 'was aware, following the October 2004 insurgency, that the United Nations were conducting an investigation'. On 27 October 2004 MONUC made public a résumé of the results of its inquiry during a press conference. A summary of MONUC's investigation into the Kilwa incident was also contained in the regular report on MONUC's activities to the Security Council in December 2004:

The occupation of Kilwa resulted in the displacement of its population, which reportedly fled in fear of reprisals by FARDC. On 15 October, FARDC re-established control over

When asked in the *Four Corners* interview whether he was aware of the MONUC report of its investigation, Mr. Turner replied: 'No. I know that Monec [sic] went to Kilwa...' ^{xxxvii}

In its news release of 21 June 2005, Anvil states:

Anvil was aware, following the October 2004 insurgency, that the United Nations were conducting an investigation, but Anvil was not contacted by the UN in relation to the incident other than to confirm the security situation in the Kilwa area. ^{xxxviii}

The news release continues:

Anvil is cooperating fully with investigations of the October 14 incident by the United Nations Mission in the Democratic Republic of the Congo (MONUC)...

the town. A MONUC investigation suggested that during the attack and its immediate aftermath, FARDC elements were responsible for the indiscriminate killing of over 70 persons. The Transitional Government has yet to respond to the MONUC request to open an independent and transparent investigation into these killings.^{xxx}

- Does the company maintain that ‘at the time, Anvil had no knowledge of human rights abuses’? Did the company omit to monitor MONUC’s press conferences or its reports to the Security Council, even though it was aware that a MONUC investigating team had visited Kilwa in October 2004?
- Was Anvil aware that the Voluntary Principles on Security and Human Rights (see below) – which it has agreed to comply with – require that ‘[c]ompanies should actively monitor the status of investigations and press for their proper resolution’?

In January 2005 ASADHO/Katanga’s report into the Kilwa Massacre was published and copies were widely distributed including to the Governor of Katanga.^{xxxi}

On 28 February 2005, ACIDH wrote to Anvil concerning the allegations about the use of the company’s vehicles and how this had facilitated human rights violations by the FARDC at Kilwa. During the recent NGO visit to DRC, Bill Turner confirmed that he had received this letter.

In April 2005, RAID sent an email to Bill Turner asking for the company’s reaction to these allegations.

- What did Anvil do on receipt of these NGO reports? In the light of these NGO communications, why does the company state that it was only learning that the Kilwa incident was ‘a terrible event’ eight months later in June 2005?

^{xxvii} ACIDH-RAID report, ‘Reactions of the Congolese Local and Provincial Authorities’, Sector Chief of Kilwa, M. Mucheki Kalunga, and his Administrative Secretary, Emmanuel Mwamba, interview 15 September 2005, p.9.

^{xxviii} http://www.anvil.com.au/prj_dikulushi2.shtml.

^{xxix} According to an Anvil news releases of 18 and 21 October 2004, personnel were brought back in on 17 October, mine operations recommenced on 18 October, loading of the concentrate trucks resumed on October 19, and the export of concentrates via Lake Mweru began again on October 20. See Anvil Mining Limited, ‘Anvil Mining to resume operations at Dikulushi Mine, DRC’, *News Release*, 18 October 2004; ‘Anvil finances mining equipment for Dikulushi Mine with \$2.4 million loan from RMB Resources Limited’, *News Release*, 21 October 2004.

^{xxx} 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.

^{xxxi} ASADHO/Katanga, Report on human rights violations committed in Kilwa in the month of October 2004, January 2005.

^{xxxii} Anvil Mining Limited, ‘Anvil Confirms That Allegations Are Unfounded’, *News Release*, 23 August 2005.

^{xxxiii} Four Corners taped interview with Bill Turner, full transcript, p.56.

^{xxxiv} Four Corners taped interview with Bill Turner, full transcript, p.49.

^{xxxv} Anvil Mining Limited, ‘Advice on rebel activity in village of Kilwa, DRC’, *News Release*, 15 October 2004.

^{xxxvi} Anvil Mining Limited, ‘Advice on rebel activity in village of Kilwa, DRC’, *News Release*, 15 October 2004.

^{xxxvii} Four Corners taped interview with Bill Turner, full transcript, p.61.

^{xxxviii} Anvil Mining Limited, ‘Anvil Confirms Denial of Unfounded Allegations’, *News Release*, 21 June 2005.

(d) Anvil's reaction to the FARDC requisitioning and the stabilization of Kilwa

Key questions

MONUC indicates that Anvil's version of events, describing how it objected to the Congolese authorities on 16 October 2004 to the presumed requisitions of October 2004, 'appears to contradict' Anvil Mining's December 2004 report, 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".^{xxxix}

- Why didn't Mr. Turner state in interviews for the Four Corners program, or in press releases at the time or subsequently, that protests about the requisitions had been immediately lodged on 16 October 2004 with the military and administrative authorities?
- Assuming that MONUC is correct in its reporting, what form did Anvil's protests take? Will Anvil provide copies of these protests?

RAID, ACIDH and ASADHO/Katanga understand that Ordinance Law 112/FP of 11 June 1940 concerning requisition contains provisions that allow those whose property and resources are requisitioned to: (i) refuse a requisition and seek a judicial review of the requisitioning order;^{xi} (ii) claim compensation for costs incurred because of the requisition.^{xii}

- Why did not Anvil refuse the requisition order? If the requisition order was enforced, why did not Anvil seek judicial review, as provided for under Ordinance Law 112/FP?
- Has Anvil sought compensation from the Congolese authorities?
- Has Anvil made any insurance claims as a result of the Kilwa incident, for example, for loss of earnings, the cost of charter flights or damage to vehicles and equipment?

Company statements and responses

Anvil's Report for Quarter ended December 31, 2004, states:

Kilwa Event

During October 2004, production was suspended for a period of five days owing to the precautionary evacuation of staff to Lubumbashi, following an incursion of a small number of rebels into the Kilwa area. The evacuation and corresponding return to work was carried out efficiently and without incident. The government and military response on both provincial and national levels was rapid and supportive of the prompt resumption of operations. Security consultants have been engaged to review current security risk mitigation measures, to ensure that the likelihood of similar business interruptions occurring in the future is minimised.^{xliii}

In response to a question in the *Four Corners* interview as to whether or not the army paid for the rental of the charter aircraft, Mr. Turner responded:

'No. Well not to my knowledge. I and I can't imagine they would....And and I I I can't ima imagine us sending a bill to them for for half the cost of the aircraft.'^{xliiii}

^{xxxix} Anvil, in a letter to MONUC dated 20 June 2005, 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 the report was 'a dry response to compulsory reporting requirements of the financial markets. It was produced prior to us having an appreciation of the seriousness of these events and in no way reflects the deep sadness we feel following the deaths that occurred'. (MONUC report, paragraph 40, fn 15).

^{xi} Ordinance Law 112/FP, provision 8: 'In cases where the lenders or the indigenous group chief do not comply with the order, the requiring authority has the right to enforce the execution of the requisition. The refusal to satisfy a requisition is made verbally to the requiring authority and the territorial authority is invited, if need be, to make some observations. The matter is then transmitted verbally to the judicial authority who will make a legal ruling.' (RAID translation).

^{xii} Ordinance Law 112/FP, provision 9: 'Goods and services are requisitioned on the basis of an indemnity representative of their value. The amount of the indemnity is determined by all elements and particularly with regard to the amount normally paid for in the region for the service or item which was requisitioned. The indemnity will only ever include the real prejudice (loss) without regard to damages-interests or to a loss of profits. (RAID translation).

^{xliii} Anvil Mining Limited, 'Report for Quarter ended 31 December 2004', News Release, 28 January 2005, p.4.

^{xliiii} Four Corners taped interview with Bill Turner, full transcript, p.51.

(e) Anvil's experience of the conduct of the FARDC

Key questions

- What form did the requisition of March 2004 take? Who issued it and who at the company received it? Was the requisition verbal or written?
- Why did Anvil initially resist the requisition in March 2004 given that, as in October 2004, it was 'the legitimate army of the legitimate government of the country' that sought Anvil's support?
- The company has confirmed that it protested about the requisitioning of vehicles in March 2004. What form did these protests take? Will Anvil provide copies of these protests?
- Did Anvil's protests to the authorities refer to the way in which their vehicles were requisitioned or to the fact that the company felt that the Congolese authorities had not provided adequate protection of the mine and mine staff? After interviewing Mike O'Sullivan, RAID understands that, following the March 2004 incident, Anvil evacuated 100 staff from the mine site and that troops were brought in from Lubumbashi.
- Why did Anvil's formal report to the Australian Stock Exchange dated 28 April 2004, regarding the March 2004 incident, not refer to the fact that its vehicles had been commandeered at gun point?
- According to Anvil, its staff in March 2004 had been threatened, punched and forced at gunpoint by the FARDC to hand over the vehicles. Mike O'Sullivan also stated that Anvil complained about looting by soldiers to Colonel Ademar. Did this not alert the company to the fact that FARDC soldiers were prepared to use violence and intimidation and to act outside of the law? It is understood that Anvil objected to the authorities about the army's conduct on this occasion.

MONUC estimates that ninety per cent of the population had fled from Kilwa on 14 October 2004.^{xliv} MONUC reports that the inhabitants of Kilwa 'rapidly understood that this movement in rags with no proper leadership would easily be wiped out by the regular armed forces.'^{xlv} The fact that such a large proportion of the population fled suggests that people were fearful of the FARDC's response. Indeed, the local NGO ACIDH has gathered testimony to this effect: '...before Colonel Ademar's arrival... a message had been sent over radio warning them that the troops would show no mercy. Whoever was found in Kilwa would be dealt with as an insurgent.'^{xlvi}

- Was not Anvil aware of the reputation of the FARDC and the fear it engendered among the local population?

Company statements and responses

In his 24 August 2005 discussion with NGOs, Mike O'Sullivan, Anvil's Vice President for Development, gave more details about the incident in March 2004 when military in pursuit of Mayi Mayi rebels came to Dikulushi and demanded Anvil's vehicles. He stated that he and two other members of staff had been threatened, punched and forced at gunpoint to hand over the vehicles. It had been a frightening experience and RAID was told that Anvil had later protested vehemently about the incident to the Governor of Katanga, the Administrator of the Territory and the senior military commander.^{xlvii} Mr O'Sullivan explained that at the time of the March 2004 incident soldiers had looted property from villagers.^{xlviii} Anvil reported this to Colonel Ademar who then took immediate disciplinary action against those responsible.

Anvil's news release of 21 June 2005 makes passing reference to this 'previous experience with rebel activity in the Kilwa area, during which Anvil's vehicles were, after initial resistance, commandeered at gunpoint'.^{xlix}

However, it does not appear that Anvil issued a news release at the time of the March 2004 incident. Nor does it appear that Anvil immediately informed the Australian Stock Exchange about the incident. The rebel incident occurred just prior to an announcement on 23 March 2004, by the board of Anvil Mining NL, of its proposal to restructure the Anvil Group in order to transfer the Group's domicile from Australia to Canada and to list on the Toronto Stock Exchange.ⁱ It is RAID, ACIDH and ASADHO/Katanga's understanding that the first public reference to the March 2004 incident was in its quarterly report to the Australian Stock Exchange, dated 28 April 2004. The company stated that the Dikulushi mining operation was below budget,

'affected by an interruption to the operations in mid March as a result of military activity in the area to resolve some local unrest. The Company's operations were in no way connected to the dispute however, the Company's standard operating security arrangements came into effect, and this resulted in the lower mining production.'ⁱⁱ

Anvil makes no reference to the use of force by the FARDC, the taking of its vehicles, nor to the protests made by the company to the Congolese authorities.

^{xliv} MONUC report, paragraph 15

^{xlv} *Idem.*

^{xlvi} ACIDH-RAID report, p.16. Two Kilwa radio operators have confirmed this information, saying that they heard the message from Colonel Ademar being transmitted while in the bush.

^{xlvii} See Annex 4.

^{xlviii} RAID's notes of the account of the Kilwa incident given by Mike O'Sullivan, Anvil's Vice President for Development, at Dikulushi Mine, DRC, 24 August 2005 (reproduced as Annex 4).

^{xlix} Anvil Mining Limited, 'Anvil Confirms Denial of Unfounded Allegations', *News Release*, 21 June 2005.

ⁱ Anvil Mining NL, 'Anvil Group Proposes Restructure to allow Listing on TSX and ASX', 23 March 2004; see also 'Proposed reorganisation by way of a scheme of arrangement', 16 April 2004.

ⁱⁱ Anvil Mining NL, Report for the Quarter ended 31 March 2004, 28 April 2004.

(f) *The role of the Congolese military in providing security*

Key questions

- Mr. Turner refers to Anvil ‘expecting the protection of the government’ to ‘our ah a problem there [in Kilwa] with a group of rebels’ and asks ‘could we just sit there and let these guys ah walk past mine[?] I don’t think so.’
- What exactly did Mr. Turner mean by the above statement?

Soldiers from the FARDC force responsible for human rights atrocities remained in the town for nine months. Mr. Turner confirms that Anvil was paying for soldiers stationed by the government in Kilwa after the October 2004 incident.

- Why was a private company paying for the stationing in the area of government troops?
- What steps did Anvil take to ascertain whether any of the soldiers it was paying for had been involved in human rights violations during the Kilwa incident?

Company statements and responses

Mr. Turner, in the *Four Corners* interview, states:

Ah can you imagine us sitting there expecting the protection of the government. Ah we’ve got all these vehicle there and these soldiers just making their 200 kilometre trip ah down to Kilwa to come and put our ah a problem there with a group of rebels, could we just sit there and let these guys ah walk past mine. I don’t think so.^{lii}

Moreover, Mr. Turner says in the same interview:

We’re paying, we were paying for ah some soldiers I think, after the there was an incident at um at Kilwa in October last year and which required that the government move a an expanded group of troops in there.^{liii}

Mr. Turner also makes reference to the presence of Congolese army intelligence personnel at the Dikulushi mine site:

‘Well he, there is an army intelligence guy at site. Again we pay these people a Perdiem.’^{liv}

‘We have army intelligence on site, ANR, Army Intelligence is ANR. They’re on site all the time.’^{lv}

In news releases issued shortly after the Kilwa incident, Anvil describes how it is ‘continuing its discussions with the Government of the DRC to provide additional security for the mine and the surrounding region to prevent such incidents and unscheduled disruptions to the mine operations occurring in the future.’^{lvi}

^{lii} Four Corners taped interview with Bill Turner, full transcript, p.50.

^{liii} Four Corners taped interview with Bill Turner, full transcript, p.17.

^{liv} Four Corners taped interview with Bill Turner, full transcript, p.19.

^{lv} Ibid., p.20.

^{lvi} Anvil Mining Limited, ‘Anvil finances mining equipment for Dikulushi Mine with \$2.4 million loan from RMB Resources Limited’, *News Release*, 21 October 2004; see also ‘Anvil Mining to resume operations at Dikulushi Mine, DRC’, *News Release*, 18 October 2004.

4. Compliance with the OECD Guidelines and the Voluntary Principles on Security and Human Rights: the obligation to report abuses

Anvil has stated its compliance with both the *Voluntary Principles on Security and Human Rights* (hereafter, the ‘*Voluntary Principles*’) and the OECD Guidelines for Multinational Enterprises (hereafter, the ‘*OECD Guidelines*’).⁵⁴

On 18 August 2005, Philippe Valahu, the Acting Director of MIGA’s Operations Group wrote to RAID confirming that MIGA had obtained representations from Anvil that ‘its procedures in this project would comply with the Voluntary Principles on Security and Human Rights’.⁵⁵

The *OECD Guidelines*, adopted by thirty-nine governments – including Canada and Australia, where Anvil Mining Limited is incorporated and listed – are recommendations addressed directly to companies setting down ‘shared expectations for business conduct’.⁵⁶ Provision II.2 requires that enterprises should:

Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.

The *Voluntary Principles* have been developed to assist companies in balancing the needs for safety while respecting human rights and fundamental freedoms. They are recognized and supported by a number of governments, NGOs and companies in the extractive and energy sectors. The *Voluntary Principles* should be used by companies to guide their conduct.⁵⁷

The *Voluntary Principles* require, *inter alia*, that:

Risk assessments should consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security. Awareness of past abuses and allegations can help Companies to avoid recurrences as well as to promote accountability. Also, identification of the capability of the above entities to respond to situations of violence in a lawful manner (i.e., consistent with applicable international standards) allows Companies to develop appropriate measures in operating environments.

- Did Anvil consider the human rights record of the Congolese government and FARDC? What did it do to ensure that it was aware of past human rights abuses committed by the FARDC?

Companies should communicate their policies regarding ethical conduct and human rights to public security providers, and express their desire that security be provided in a manner consistent with those policies by personnel with adequate and effective training.

- Does Anvil have policies on ethical conduct and human rights? Can Anvil provide details and copies of its communications with the DRC government setting out these policies?

Under the rubric of ‘Deployment and Conduct’, the *Voluntary Principles* specify that:

Companies should use their influence to promote the following principles with public security: (a) individuals credibly implicated in human rights abuses should not provide security services for Companies; (b) force should be used only when strictly necessary and to an extent proportional to the threat....In cases where physical force is used by public security, such incidents should be reported to

⁵⁴ Handout of Bill Turner’s presentation to NGOs, Dikulushi Mine, 24 August 2005.

⁵⁵ The human rights abuses in Kilwa in October 2004 occurred after the MIGA Board had approved the Dikulushi project in September 2004, but before MIGA signed a contract of guarantee with Anvil Mining Corporation in April 2005.

⁵⁶ Member countries are: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the UK, and the USA; adhering non-members are: Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia.

⁵⁷ For the text of, and information on, the *Voluntary Principles*, see <http://www.voluntaryprinciples.org/principles/public.php>.

the appropriate authorities and to the Company. Where force is used, medical aid should be provided to injured persons, including to offenders.

- To what extent did Anvil seek to ascertain the human rights record of Colonel Ademar Ilunga and the 62nd brigade? Does Anvil believe that the deployment of at least 150 heavily armed FARDC soldiers was proportional to the threat presented by ‘a poorly organised and poorly armed rebellion movement’ orchestrated ‘by at least ten apparently naïve and ill-equipped persons’? Presumably Anvil would agree that force used by the FARDC – to include summary executions and torture – was totally disproportionate and criminal?

Under the section ‘Responses to Human Rights Abuses’, the Voluntary Principles state:

Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate, Companies should urge investigation and that action be taken to prevent any recurrence.

- By asserting that ‘at the time, Anvil had no knowledge of human rights abuses’ in Kilwa, is it not in fact the case that Anvil was unable to record and report allegations of human rights abuses? In view of the fact that MONUC has stated that ‘three Anvil Mining employees drove the vehicles used by the FARDC’, that Anvil security personnel remained behind to monitor the situation, and that 200 Anvil employees live in Kilwa, what has the company done to gather and record the testimony of its personnel and report this to MONUC and the Congolese authorities?

Companies should, to the extent reasonable, monitor the use of equipment provided by the Company and to investigate properly situations in which such equipment is used in an inappropriate manner.

Anvil, in its news release of 24 August 2005, refers to its own internal investigation into the Kilwa incident and states:

‘Following the completion of a comprehensive internal investigation and receipt of advice from Senior Counsel Wayne Martin QC, Anvil has no hesitation in announcing that:

- The investigation was thorough and complete;
- The allegations against Anvil are unfounded;
- There is no credible basis for any suggestion that Anvil or any of its officers or employees committed the offence of bribing a foreign public official or aided and abetted any offences committed by the FARDC during the Kilwa uprising...’

Until the Martin and Utz report is released, the conclusions reported by the company in its 24 August news release remain unsubstantiated.

- Why has the company not released the Martin and Utz report?
- Why has the company not, despite a request from MONUC, provided the UN investigating team with a copy?⁵⁸
- What steps did Anvil take to monitor the use of its logistic and personnel by the FARDC? What has it done to investigate its improper use by the FARDC in the Kilwa Incident?

⁵⁸ According to MONUC, ‘In order to shed some light on this issue, the MONUC has asked Anvil Mining to have access to the company’s internal investigative report concerning the events in Kilwa, including the statements made by the employees who would have been requisitioned by the army. But Anvil Mining declined to give the report to MONUC due to legal proceedings envisaged against the company.’ (MONUC report, paragraph 41.

5. NGO visit to the Dikulushi Mine and Kilwa, 24-25 August 2005

RAID had two objectives for visiting Dikulushi and Kilwa: First, to ascertain as far as possible the security situation of witnesses to the incident. RAID had received disturbing reports from a number of different sources that witnesses had been threatened and intimidated allegedly by persons linked to the military or security services. According to reports these threats ceased once Colonel Ademar Ilunga was detained. RAID was also concerned that the human rights NGOs who had first made investigations into the Kilwa incident, ASADHO/Katanga and ACIDH, had been the subject a public campaign of intimidation and harassment, which had allegedly been promoted by the Governor of Katanga's press attaché and Congolese business associates of Anvil Mining.

The other purpose of the visit was to meet Anvil's management and to give them an opportunity of responding in person to the allegations that had been made about the role of the company in the Kilwa incident of October 2004. Anvil Mining set out the terms for the visit, which RAID agreed to abide by:

In terms of discussions relating to the October 2004 Kilwa Incident; while in the DRC, you will have access to me [CEO, Bill Turner], Mike O'Sullivan and Pieter van Niekirk (Security Manager). You will appreciate that given the foreshadowed legal action by Sydney law firm Slater & Gordon, you will not have access to other Anvil employees for the purposes of discussing the Kilwa Incident, and your acceptance of this is a pre-requisite for your visit going ahead. Apart from anything else, we have an obligation to protect all our employees from this potential litigation. [Email from Bill Turner, 10 August 2005]

Anvil has published its account of the NGO visit to Dikulushi mine and Kilwa on its website. In this response, RAID draws attention to certain events, which have not been fully covered in the company's report, and seeks to address and, where necessary, correct those instances where RAID's views have been wrongly reported.

The company, in its account of the NGO visit, states:

'In support of certain questions raised, the Company provided the participants with documents, including the Company's News Release of August 24, 2005, stating the conclusions of the Company's recently completed internal investigation carried out by Queen's Counsel Wayne Martin and Clayton Utz, our external lawyers in Perth. In addition, the letter from the Governor of the Province of Katanga dated June 11, 2005, confirming that he had requisitioned the trucks and the plane for the transport of the military troops of the 6th Military Area (6ième Région Militaire) of DRC (known as FARDC) towards the village of Kilwa.'

Attention is drawn to the fact that the company did not provide, nor has since provided, NGOs with a copy of Martin and Utz's investigation. As concerns the Governor's letter of requisition, and as noted above, questions remain about why it was issued eight months after the Kilwa incident and why MONUC maintains that the version of events provided to its investigators by Anvil 'appears to contradict' the company's earlier December 2004 quarterly report.⁵⁹

The company also reports:

'The participants, including Mrs Patricia Feeney, expressed their appreciation of the Company's presentation, the long and detailed discussions and the answers to their questions with the support of relevant documents. Bill and Mike O'Sullivan, Vice President Development, brought to the attention of the group, a number of inaccuracies and falsehoods reported by the media and different international and local NGOs on the events of Kilwa, one by one.'

⁵⁹ Anvil Mining Limited Report for Quarter ended 31 December 2004. Anvil, in a letter to MONUC dated 20 June 2005, 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 the report was 'a dry response to compulsory reporting requirements of the financial markets. It was produced prior to us having an appreciation of the seriousness of these events and in no way reflects the deep sadness we feel following the deaths that occurred'. MONUC report p.10 footnote 15.

‘...certain NGOs expressed to us on the return flight to Lubumbashi, a more positive attitude given all that they had observed over the two day visit. We hope that with all the documents distributed, the members of these NGOs will correct and report the facts appropriately in their future correspondence.’

RAID, for its part, while acknowledging the company’s efforts in preparing a presentation, believes that, on the basis of the MONUC report, there are still questions to be answered by the company (as detailed in this report) concerning the Kilwa incident. Certain supporting documents – for example, the results of the Martin and Utz investigation, correspondence with the Congolese authorities concerning both the March and October 2004 ‘présomées réquisitions’ and the company’s protests, correspondence with MONUC – have not been provided. If the company can pinpoint particular ‘inaccuracies and falsehoods’ or facts in need of correction in RAID’s reporting of the Kilwa incident, then RAID is happy to consider and address each of these in turn.

Anvils’ report of the NGO visit concludes:

‘The Company apparently received a good deal of praise from the local population for the improvements it has achieved in the local communities and the NGOs noted that. From subsequent discussions with the NGOs, there were no criticism of Anvil Mining from the local community and from all accounts, the people met categorically stated that Anvil Mining did not have any involvement in the military activity associated with the incident in Kilwa last October. On the contrary, they indicated that Anvil Mining provided people and logistical support for the return of the villagers to Kilwa, the hospital and the Catholic Mission. Such comments are in conformity with the extracts from the Petition of the Traditional Chiefs of Kilwa, an excerpt of which was attached to the Company’s News Release dated August 24, 2005.’

Anvil made arrangements for RAID’s Executive Director and others to visit villages closest to the mine: Dikulushi, Kiaka, and Shula. RAID met local chiefs and visited the town of Kilwa, the scene of many of the human rights abuses of October 2004. Anvil provided transport and Anvil staff acted as interpreters (the population is predominantly Bemba speaking) and accompanied the group to all the meetings. Apart from RAID, Anvil invited Issac Kekana, the Consul General of the Republic of South Africa in Lubumbashi, and representatives of three Lubumbashi – based NGOs: ASADHO/Katanga (who had written a detailed report of the Kilwa incident) and the two recently established NGOs, LICOF and RELCOF (who had not until then made any public pronouncement about the incident). ACIDH, another Lubumbashi based NGO, which on 28 February 2005 had written to Anvil about its alleged logistical support to the Congolese military, had not been invited.

Anvil provides employment and benefits to the local economy. However, MONUC states that the leader of the 14 October uprising ‘knew that he could count on some frustration prevalent amongst the local community in relation to Anvil Mining’s activities’ and that ‘[t]he company was indeed accused by parts of the population of employing non-native persons and of not contributing enough to the improvement of the level of life of the local community.’ MONUC, ABC, ACIDH and ASADHO/Katanga have also gathered testimony from members of the local community and eyewitnesses to the Kilwa incident that testify to the use of Anvil vehicles and drivers and the presence of Anvil security personnel. The views of the local chiefs are, of course, important and should be given due consideration. However, the views of other local residents and eyewitnesses are equally valid and cannot be set aside or dismissed.

The Kilwa incident has left the population traumatised. From the visit, it is clear that local people are still deeply scarred by the events of October 2004. In many of the villages visited, chiefs and local people expressed indignation about victims who had been summarily executed by the soldiers. At Nsensele, where many of the bodies are buried in pits, local people expressed their profound unhappiness that families and local chiefs have not been allowed by the military to observe traditional funeral rites and to give the victims a proper funeral. This was an issue that particularly concerned the Consul General of the Republic of South Africa. In Kilwa, different sources informed RAID that immediately after the incident, when Colonel Ademar was still in control of the town, anyone seen to be weeping or in distress about the killings was threatened by the military.

Annex 1 – MONUC Report (unofficial translation)

UNITED NATIONS

United Nations Organization Mission in the
Democratic Republic of Congo

NATIONS UNIES

Mission de l'Organisation des Nations Unies
en République Démocratique du Congo

MONUC

Kinshasa

Report on the conclusions of the Special Investigation concerning allegations of summary executions and other human rights violations perpetrated by the Armed Forces of the Democratic Republic of Congo (FARDC) in Kilwa (Katanga Province) on 15 October 2004.

I. Summary

1. 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 350Km north of Lubumbashi, in an area where MONUC is not represented on the ground.
2. 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.
3. The rebellion was orchestrated by at least ten apparently naïve and ill-equipped persons, claiming to belong to the Revolutionary Movement for the Liberation of Katanga (MRLK). This movement was unknown before the attack in Kilwa. Contrary to early rumours, neither the Mayi Mayi nor Zambian citizens were involved in the rebellion. The participation of Katanga state police force is also unlikely. The attack by the Revolutionary Movement for the Liberation of Katanga (MRLK) met almost no resistance from members of the military present in Kilwa - estimated between 0 and 20 persons – or the local police. The MRLK managed to recruit some young people locally – estimated to less than 100 persons. It is very likely that the MRLK did not prepare this operation on its own but that it was manipulated by other persons. However, MONUC did not find definite proof of persons who would have mandated and supported the MRLK. There are strong suspicions that high-ranking military officers may have been involved in the incident.
4. The events in Kilwa have generated a massive exodus of civilians, probably up to 90% of the local population. During MONUC's visit to Kilwa, only half of the people who had fled had come back to Kilwa. Several persons found that their belongings had been pillaged.
5. Since its investigation of October 2004, MONUC has put pressure on local and national authorities to ensure that the persons responsible for the crimes perpetrated in Kilwa are being brought to court. On 29 June 2005, the Colonel Ademars, Commander of the 62nd brigade of the Armed Forces of the Democratic Republic of Congo (FARDC) was arrested by Military Court officials in Lubumbashi. This arrest constitutes an important step in the fight against impunity in the Democratic Republic of Congo; many more efforts must still be made to ensure that other members of the military responsible and accessory to these crimes are being arrested, and to ensure the safety of victims and of witnesses. Indeed, the threats and intimidations made against the human rights organisation ASADHO/Katanga, based in Lubumbashi, following its investigation of the incident in Kilwa, demonstrate the risks taken by those who have denounced the events that occurred in Kilwa.

6. MONUC has been in contact with the mining company Anvil Mining concerning allegations according to which the FARDC appear to have used the company's logistic and at least three of the company's employees during their counter-offensive in Kilwa. As expressly stated in the *United Nations Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, and in the *OECD (Organisation for Economic Co-operation and Development) Guidelines for Multinational Enterprises*, it is crucial that activities of international investors be undertaken in conformity with the protection of human rights. The present report includes the conclusions reached by MONUC following its investigation on the ground and the discussions it had with the company Anvil Mining.

II. Methodology

7. Following the request made by MONUC for permission to go to Kilwa from 21 October, General Alengbia Nzambe, the commander of the 6th military region, delayed the mission by one day in order to allow his assistant, General Sylvain Tchokwe, to travel to Kilwa before the arrival of the investigation team. After their arrival, the team discovered that the potential key witnesses had been warned by the soldiers not to cooperate with MONUC. In order not to expose the civil sources to retaliation, the team chose to limit its investigation and its contacts with the local population and took every preventive measure to ensure that its sources remained anonymous.

8. MONUC's investigations were also hindered by the fact that a proportion of the inhabitants – around 40% – had not yet returned to Kilwa, so allegations of forced disappearances were difficult to verify in these conditions.

9. Before travelling to Kilwa, the team met the Governor of Katanga, the Commander of the 6th military region and the provincial police inspector. In Kilwa itself, the team met the local civilian authorities, the commander of the 62nd brigade of the FARDC and the deputy head of the local police.

III. Presentation of the facts

14 October 2004

10. On 14 October at around 2 a.m. a group of 6 or 7 people¹, led by Alain Kazadi Makalayi, a fisherman of around twenty years of age who came from Pweto and who claimed to be the General-in-chief of the Revolutionary Movement for the Liberation of Katanga (MRLK), attacked and briefly occupied Kilwa. The exact circumstances surrounding the beginning of the operation are not known with certainty. Preliminary reports refer to an attack launched from Nshimba, a small island located 7 kms from Kilwa, on the Zambian side of Lake Mweru, which apparently passed through Katanda, a small fishing village located approximately 10 kms from Kilwa. However this information was not able to be confirmed.

11. In spite of their limited arms, the MRLK met with little or no resistance on the part of the soldiers – around 10 to 20 men – or the local police present in Kilwa. No armed confrontation was reported. Most of the FARDC forces based in Kilwa and around Pweto had been redeployed elsewhere between September 2004 and the day before the attack. Early in the morning of 14 October the insurgents seized two soldiers who were later seen with their hands tied in the house of a local primary school teacher who supported the insurgents. The latter went to the police station to ask the police to join them, while claiming that they had the support of the soldiers and politicians of the whole province of Katanga. At least eight policemen, including the chief of police, were apparently convinced by Kazadi's declarations and chose to join the insurgents. The latter took five pistols and ammunition from the police station. They then went to the military armoury to steal 17 weapons. During the day on 14 October an unspecified number of FARDC officers and police who had not rallied to the insurgents' cause were seen moving around freely dressed in civilian clothing. During the same day, a group of 40 Congolese who were unarmed and who had previously been recruited by Kazadi on the island of Nshimba, reached Kilwa to join the initial group.

¹ According to one of the supposed assailants, the group was apparently made up of Kazadi, his assistant Mpundu Bwalya, a retired soldier who is Kazadi's uncle, a former policeman and four other people.

12. Kazadi and his assistant, Mpundu Bwalya, went to the office of the MSF (Doctors Without Borders) to get their radio. They wanted to use the radio to proclaim the liberation of Katanga to the whole world. They were very disappointed to learn that the radio could not link them directly to Radio France International or to the BBC. Kazadi then asked Bwalya to declare to the population that he had put money aside in South Africa which was destined to buy tractors and fishing nets for the population. At the same time, Kazadi and some other armed men headed towards Anvil Mining's petrol depot in Kilwa.

13. On his way, Kazadi stopped at the market and held a public meeting during which he proclaimed the independence of Katanga. He stressed that the time of "pocketing money from the mines" was over for President Kabila and Katumba Mwanke – one of the president's advisers. He added that there was no need to be afraid because other villages in the province were about to fall on the same day and that the FARDC in Pweto and high-ranking officials supported his initiative. He asked the inhabitants of Kilwa to join them and to take up arms. He finished with the assurance that the news of the liberation of Katanga would very soon be heard on the international air waves.

14. At Anvil Mining's petrol depot, Kazadi asked the employees to help them to contact the "white people" in the company at Dikulushi, located some 30 kms to the north of Kilwa. However, the insurgents insisted on the fact that they had not come to disturb the company's activities. When the employees of Anvil Mining refused to negotiate, they became more aggressive, and asked for access to the petrol which was apparently granted to them. In the morning, the insurgents organised arms to be distributed to their supporters – estimated to be less than 100 people – who were mostly young people from the town with little or no knowledge of how to handle arms.² Four of them – who were later arrested and transferred to Lubumbashi by the FARDC – told MONUC that they were recruited by force. Other reports speak of the fact that the insurgents paid or promised to pay the civilians who were going to join them. The new recruits became over-excited when they received the arms and started to fire into the air. Following complaints from the population, Kazadi allegedly had to intervene to order them to stop.

15. At the end of the morning, Kazadi's sympathisers received the order to go home for lunch and to return in the afternoon. It was then that 90% of the 48,000 inhabitants of Kilwa decided to flee. Some headed for the island of Nshimba by boat and others went to hide in the forest.³ In the absence of information on the radio confirming the promise that the province had been liberated, the population soon understood that without strong leadership, this movement could very quickly be swept aside by members of the national army. The insurgents did not oppose their departure.

15 October 2004

16. On 15 October at around 4.30 p.m., the 62nd brigade of Pweto under the command of Colonel Ademars, launched an attack on the town. MONUC has received information according to which the operation was ordered by the authorities in Kinshasa and allegedly bypassed the command of the 6th military region (ex-MLC).

17. Before entering the town, the FARDC bombarded Kilwa, causing the destruction of at least five or six houses. They then started a confrontation with Kazadi's group, particularly around the market area and on the road to the airport. The confrontations lasted between one and two hours without the FARDC suffering any losses. Shortly afterwards, the FARDC started a house-to-house search to look for insurgents, which continued until the afternoon of 16 October. As they carried out this operation, the FARDC committed summary executions as well as other violations of human rights (see below).

16 October 2004

18. In the evening, Alain Kazadi was arrested near Kilwa, after being shot and injured in the hand and back. He was taken to the hospital where he met Colonel Ademars. According to a witness, Kazadi expressed his

² An eye witness has reported that he noticed young boys aged between 15 and 17 in the group. Investigations must be carried out in order to confirm whether minors were among the ranks of the insurgents.

³ The departures occurred along the following axes: Kilwa-island of Nshimba, Kilwa-Pweto, Kilwa-Lubumbashi, Kilwa-Dikulushi, Kilwa-Kakinga, Kilwa-Kasenga.

bitterness to Colonel Ademars, calling him a traitor and refusing to talk to him because he claimed his rank was higher than the Colonel's. Colonel Ademars contested his version of the facts and stated that he was not part of the plot. He violently ripped out Kazadi's drip.

17 October 2004

19. The situation returned to normal. Katumba Mwanke, an adviser to the President of the Republic, Governor Kisula Ngoy, the commander of the 6th military region and other officials visited the island of Nshimba and strongly advised the displaced population to return to Kilwa. The population began to return to Kilwa the day after this meeting.

IV. Political analysis

20. Despite the rumours, neither the Mayi Mayi nor Zambian citizens were implicated in the attack. The participation of the former gendarmes of Katanga is also very unlikely.

21. The rebellion was apparently orchestrated by a group of people who knew the area well. This does not come as a surprise because during the period of July and October 2004, Kazadi appears to have travelled to Kilwa several times, to share his plan of action with several persons without being bothered by the police. Kazadi also appears to have travelled to Pweto, crossing the Zambian border and travelling back to Kilwa via the island of Nshimba without being stopped. According to a police source, Kazadi was aware of the frustration experienced by members of the police force – all ex-FAP⁴ – he could expect that them not to oppose much resistance and that some of them would even join him in the plot. Kazadi also knew that he could count on some frustration prevalent amongst the local community in relation to Anvil Mining's activities. This mining company appears to exploit the rich silver/copper mine in Dikulushi with the presumed support of certain members of the presidential team who have links with Katanga businessmen. The company was indeed accused by parts of the population of employing non-native persons and of not contributing enough to the improvement of the level of life of the local community⁵.

22. However, the information gathered in Kilwa and the interviews made with some of the insurgents who are detained in the premises of the 6th military region in Lubumbashi show that these assailants were too naive and badly equipped to undertake such an operation.

23. According to Kazadi, they were part of a large-scale attack which was programmed by local independence movements. This attack was then cancelled at the last moment. To support this theory, Kazadi told one of the people who was interviewed that the day before the attack, he had received the order to postpone the offensive and to return to Lubumbashi to receive new instructions. Kazadi decided to ignore this order, as he was convinced by the separatist cause he was defending and perhaps by the magical protection granted by the Mbidi Sect, which was a popular sect in Katanga, a fishing village which the insurgents had crossed.⁶ The problem with this theory is that all the separatist, independence and federalist movements distanced themselves in relation to the insurgents. Moreover, the persons who were interviewed in Kilwa reported that Kazadi's declarations led them to believe that the insurgents were expecting the soldiers, particularly those in the brigade at Pweto, to join them in their action. From this perspective, it is tempting to believe that this group was not an uncontrolled group within a global separatist movement, but rather the easy prey of a group of manipulators who wanted to create a situation of instability in Kilwa and in fact play a double game. Ten months after the events, it is still difficult to establish the identity of the manipulators and their motives.

V. Allegations of human rights violations committed by FARDC troops

⁴ Forces d'Autodéfense Populaires : they were created by the President Laurent Désiré Kabila.

⁵ In its press release of 21 June 2005, Anvil said that the company was involved in two community projects, a school, and the renovation of the local hospital.

⁶ On 16 October, the Governor of Katanga declared in a press conference concerning the events in Kilwa that the insurgents belonged to a religious sect called Mbidi which has numerous followers on the island of Nshimba. Subsequently, MONUC discovered that this sect also has followers in Katanga and that the insurgents passed through there before reaching Kilwa. MONUC does not have any specific information regarding the role played by this sect in the insurrection.

V.1. Summary executions

24. According to local sources, more than 100 civilians died or were summarily executed during the FARDC's counter-attack on 15 October. The military authorities of Kilwa and the governor of Katanga in Lubumbashi declared that 24 to 30 militiamen had been killed, while the civil authorities in Kilwa claimed that they had no information on the number of deaths. Sources at the Kilwa hospital who helped to coordinate the burial of bodies, when asked by MONUC, denied that they had any information on this subject. It should be noted that before they met the MONUC representatives, they were called by Colonel Ademars to attend a meeting. Information obtained from independent sources indicates that 73 people were killed, including 28 who were summarily executed:

- Eleven people drowned in a lake while trying to flee from Kilwa.
- 34 bodies were found and buried by the inhabitants of Kilwa. Among the dead people were victims of summary executions, insurgents killed during the confrontations with the FARDC and civilians killed by stray bullets.
- At least 28 people who were suspected of supporting the insurgents were summarily executed.
- The MONUC team received information that soldiers buried an unspecified number of bodies who were mainly the victims of summary executions.

25. It is important to note that following MONUC's enquiry, ASADHO/Katanga mentioned more than 90 cases of summary execution by FARDC soldiers of the 62nd brigade in its "Report on human rights violations committed in Kilwa in the month of October 2004" issued in January 2005.

V.2. Some details of the summary executions

26. Stories from eye witnesses and survivors collected by MONUC mention that after the fighting between the FARDC and the insurgents, the soldiers searched the houses of the inhabitants and killed a number of civilians and insurgents (in civilian clothes) on the spot who were suspected of being militiamen. Other people were detained before being transferred to the places of execution. According to a military source, before the attack the soldiers received the order "to shoot anything that moves". On 21 October the MONUC team was informed by Colonel Ademars that when the army arrived in Kilwa they only found the insurgents because the civilians had already fled.

27. The following four men and boys were summarily executed by the FARDC soldiers according to the eye witness stories that have been collected by MONUC:

- **Mwengue** : 15 year old student, 'was shot by soldiers who wanted to steal his bicycle and his possessions.
- **Muntu Na Kakwe**, an elderly man, was killed after he had been searched at a check point and a uniform was found in his bag. According to a witness, his body is buried in one of the three graves in Nsensele which were visited by MONUC (see below).
- **A young unidentified man** was killed on the orders of Colonel Ademars while he was being detained in a civilian house in the district of Kituribi⁷ which was being used as temporary headquarters for the FARDC. His body was buried in one of the three graves in Nsensele which were visited by MONUC.
- On 22 October, soldiers beat a man to death. The man's identity has not been established.

28. The summary execution of **twelve other** men has been reported by local independent civilian sources and eye witnesses. MONUC has been able to locate, visit and note the geographical coordinates of two mass graves and one single grave in the vicinity of Kilwa (Nsensele) and has been able to confirm that the bodies of the twelve men were buried in one of the graves after they had been summarily executed by soldiers. These twelve men – whose names have not been obtained by MONUC – were taken to Nsensele by soldiers acting on the orders of Colonel Ademars on the evening of 15 or 16 October after they had been briefly detained in Kilwa. They were forced to kneel on the edge of the grave and were killed one by one. The two other graves located by MONUC respectively contain seven bodies and one body. MONUC has not obtained

⁷ Another spelling: "Kiturisi".

any clear information regarding the cause of death of these victims. An independent forensic examination would be necessary in order to exhume the bodies, identify them and verify the circumstances of their death. When MONUC visited the site, the team was able to see that the ground had been disturbed and that there was a bad odour coming from at least one grave. MONUC chose not to interview the villagers living near the site so as not to expose them to reprisals from the soldiers. However, it received information from other sources that the villagers in Nsensele had asked the soldiers for permission to place extra soil on the graves to stifle the bad odours and that a humanitarian organisation – based in Kilwa – had been contacted by the local authorities regarding the possibility of supplying body bags in order to rebury the bodies.

29. A list obtained by MONUC from independent local sources indicates that twelve other people were summarily executed including **Severa, Ilunga Ndeka Ndeka and Nyembo**.

V.3. Illegal detention

30. The military authorities of Kilwa and Lubumbashi hampered MONUC's verification work with regard to the prisoners that the authorities captured in Kilwa and then transferred to Lubumbashi. Between 18 and 25 October, the commander of the 6th military region and the Governor repeatedly refused to allow MONUC to have access to the detainees and to have any information regarding their number and their identity, giving the excuse that they were in "a state of shock" and that the military enquiry was in the process of being conducted. On 26 October MONUC was finally able to see the detainees. But it was only on 28 October that the commander of the 6th military region gave MONUC permission to visit them and to talk with them privately. Two of the prisoners, including their commander Kazadi, died during their time in hospital. The military authorities confirmed that they had died from their wounds, but only an independent autopsy will be able to determine the truth concerning these deaths which occurred in custody.

31. At the time of MONUC's visit on 28 and 29 October and 1 November 2004, the 6th military region was holding a total of 16 people in detention, including the supposed second in command of the insurgents. Most of them had been arrested following the attack on Kilwa on 15 October 2004 by the FARDC. Four of them had been arrested in Lubumbashi. None of them has been charged or has had access to a lawyer or their family. They were detained in harsh conditions, and one of them told MONUC that he had received bad treatment.

32. The number of detainees held by the soldiers could be higher. However, on 21 October Colonel Ademars informed MONUC that the FARDC soldiers were not holding any prisoners in Kilwa. MONUC heard that the day before their arrival, the FARDC soldiers had moved eight of the eleven prisoners who were suspected of participating in the insurrection from the local prison to Kilwa to an unknown destination, and released the other three. Second-hand information indicated that they had all been tortured.

V.4. Looting and extortion

33. According to several testimonies, the FARDC troops were allegedly responsible for looting civilian homes and the market. On 24 October 2004, it was reported that more than 200 civilian homes were looted. The victims of the looting declared that the FARDC soldiers were responsible. The inhabitants of the town who were concerned for their property were authorised to make short visits to their homes and shops after they fled from Kilwa on 14 October. They insisted on the fact that at this time the town was calm and no looting had occurred, with the exception of some instances in the homes of the administrator and some other official residences⁸.

34. A large number of shopkeepers have confirmed that their stock was looted following the arrival of the regular army in Kilwa. They informed MONUC that their stock was intact until the counter-attack by the FARDC. They added that the looting was above all carried out by the soldiers during the night of 15 October and that the soldiers then used trucks to transport their loot by road in the direction of Dikulushi. To corroborate the fact that the FARDC were the main perpetrators of the looting, during MONUC's visit it was informed that the soldiers were selling the loot to the displaced people on their return.

⁸ According to the military authorities in Kilwa, the selective looting by the insurgents targeted four houses.

35. MONUC has also collected testimonies according to which the FARDC soldiers extorted money and goods from civilians in exchange for their freedom and safety. According to local sources, on 15 and 16 October, the wife of well-known local businessman had a gun held to her temple and was forced to hand over 1,400 American dollars and 50,000 Congolese francs to the soldiers. Her home had been used for one of the insurgents' public meetings on 14 October.

VI. Allegations concerning the multinational company Anvil Mining

36. 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 FARDC⁹. 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.

37. In October 2004, the Commander of the 6th military region in Lubumbashi informed MONUC that the intervention of the FARDC to bring safety back to Kilwa was made possible thanks to the logistical assistance given by Anvil Mining. On another occasion, during an interview made with an Australian television channel (ABC) on 6 June 2005, the President and CEO of Anvil Mining, M. Bill Turner, responded to a question concerning the use of Anvil Mining vehicles by saying “so what?”. He acknowledged that Anvil Mining had provided logistic to the army, following a “request from the army of a legitimate government”. He also added: “We helped the military to get to Kilwa and then we were gone. Whatever they did there, that's an internal issue”¹⁰. According to a part of the interview which was not televised, Mr Turner would have added: “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 kilometer trip down to Kilwa ... could we just sit there and let these guys walk past the mine. I don't think so”¹¹.

38. The United Nations Security Council Resolution 1565 stresses the importance of creating an efficient and transparent monitoring system with regard to the exploitation of natural resources in the Democratic Republic of Congo. As stated in the *United Nations Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, as well as in the *OECD (Organisation for Economic Co-operation and Development) Guidelines for Multinational Enterprises*, it is crucial that the activities of international investors are conducted in conformity with the protection of human rights. The United Nations Norms require in particular that “transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law”¹².

⁹ 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.

¹⁰ The interview being held in English, what follows is the original text: “...*We helped the military to get to Kilwa and then we were gone. Whatever they did there, that's an internal issue.*” In other parts of the interview, Mr Turner added: “*They requested assistance from Anvil for transportation. We provided that transportation so that they could get their soldiers down to Kilwa.*” To the question of how many vehicles Anvil were being provided he answered: “*What difference does it make how many vehicles? There are a group of soldiers, and whatever number of vehicles was necessary to move these guys I guess we sent up there and they moved them down.*”

¹¹ The interview being held in English, what follows is the original text: “...*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 kilometer trip down to Kilwa ... could we just sit there and let these guys walk past the mine. I don't think so.*”

¹² United Nations Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human, Paragraph C.3, E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003.

39. As a part of its mandate, MONUC contacted Anvil Mining in order for the company to explain the use being made of the company's logistic and personnel by the Armed Forces of the Democratic Republic of Congo (FARDC) during the FARDC's counter-offensive in Kilwa and the crimes that then followed. Anvil Mining cooperated to clarify its presumed involvement and informed MONUC that the logistic, 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, the Colonel Ademars in Pweto and the governor of Katanga in Lubumbashi. Anvil Mining referred in particular to a previous incident dating of March 2004 during which soldiers of the FARDC had taken vehicles of the company Anvil at gun point and had attacked an employee of Anvil¹³. According to Anvil Mining, the company would have objected on 16 October 2004 to the presumed requisitions of October 2004, to the Colonel Ademars at the local level and to the territory Administrator in Kilwa.

40. 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 2004¹⁴, 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"¹⁵.

41. In order to shed some light on this issue, the MONUC has asked Anvil Mining to have access to the company's internal investigative report concerning the events in Kilwa, including the statements made by the employees who would have been requisitioned by the army. But Anvil Mining declined to give the report to MONUC due to legal proceedings envisaged against the company. Indeed, following the documentary of 6 June on the ABC television, the Australian Federal Police was approached by an Australian law firm acting for a coalition of international and national NGOs in order for the AFP to investigate the presumed involvement of Anvil Mining in the crimes perpetrated in Kilwa and to investigate allegations of corruption. The latter allegations relate to the presumed relationship existing between Anvil Mining and Mr. Katumba Mwanke, a close adviser of the President of the Democratic Republic of Congo, Mr. Joseph Kabila. Mr. Mwanke is included in the list of persons against whom the Expert Group on the illegal exploitation of natural resources and other types of richness in the Democratic Republic of Congo recommends a prohibition of travel and financial restrictions, in its report of October 2002 (S/2002/1146). During the interview of 6 June 2005 with the ABC television, the President and CEO of Anvil Mining, Mr. Turner has admitted that Mr. Katumba Mwanke had in the past been a representative of the Congolese government in the Board of Directors of Anvil Mining (in fact, this was the case for the period of 2001 to 2004); the company also admitted that Anvil Mining had paid Mr. Mwanke some fees for being present at meetings and that the headquarters of Anvil Mining in Lubumbashi are located in a rental property belonging to Mr. Mwanke.

42. MONUC has discussed with Anvil Mining the issue of preventing an incident such as the one that occurred in Kilwa never to happen again. As stated in the *United Nations Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, in particular in paragraphs C.4 and E.11, "Security arrangements for transnational corporations and other business enterprises shall observe international human rights norms as well as the laws and professional standards of the country or countries in which they operate" and "Transnational corporations and other business enterprises shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights". Anvil Mining has reaffirmed its belief in the principle that mining activities must be conducted in a way that conforms to the protection of human rights. Anvil Mining has also informed MONUC that the company is currently working on protocols which will specify the way in which the company must respond in instances where the government and Congolese armed forces make similar requests in the future; the protocols will also set out the principles that will guide Anvil Mining's action should a similar situation to that of Kilwa ever happen again.

¹³ See also the press release of Anvil Mining of 21 June 2005.

¹⁴ The « *Report for Quarter ended December 31, 2004* » states that "the government and military response on both provincial and national levels was rapid and supportive of the prompt resumption of operations" and it does not mention the presumed requisitions done by the FARDC.

¹⁵ Anvil Mining has explained the apparent contradiction between their report of December 2004 and the events in Kilwa – including the presumed requisition of its vehicles and of its employees – by saying, in its letter of 20 June 2005 to MONUC that the report was « a dry response to compulsory reporting requirements of the financial markets ». The report – Anvil Mining insisted – was produced prior to them having an appreciation of the seriousness of these events and in no way reflects the deep sadness they feel following the deaths that occurred".

VII. Threats made against the human rights organisation ASADHO/Katanga

43. The human rights organisation ASADHO/Katanga has received threats and intimidations following its investigating work on the incident in Kilwa. In January 2005, ASADHO published a report stating that at least 90 summary executions were perpetrated by the 62nd brigade of the FARDC during its counter-offensive in Kilwa. Later on, in particular in its press release of 1 July 2005, the human rights organisation reminded the Congolese authorities of the importance of punishing and bringing to court the persons responsible for those crimes; the press release also underlined the logistic assistance provided by Anvil Mining to the FARDC. Since then, the press attaché of the Governor has attacked ASADHO/Katanga during a local television program. Following MONUC's intervention, the Governor M. Kisula Ngoy suspended his attaché for a period of 15 days. On 13 July 2005, a demonstration of about 50 hostile individuals was held in Lubumbashi, in particular outside the offices of ASADHO. The demonstration appears to have had the support of Mr. Moise Katumbi, honorific President of the PPRD Katanga known to be close to Mr. Katumba Mwanke. The demonstrators were shouting slogans against ASADHO/Katanga, accusing the NGO of undermining the economic interests of Katanga due to the accusations made by the NGO against Anvil Mining. The demonstrators threatened to ransack the offices of ASADHO/Katanga should the NGO continue to undermine Anvil. It appears that the police did not intervene even after members of ASADHO/Katanga called for help. MONUC has met local authorities to share its concerns about the attacks made against ASADHO/Katanga and has asked that the measures necessary to ensure the safety of the NGO be put in place.

VIII. Reaction of the authorities in relation to the Kilwa incident

44. Since October 2004, MONUC has brought the Kilwa incident, and notably the responsibility of the 62nd brigade and their commander, Colonel Ademars, to the attention of the legal and political Congolese authorities, both on a local and national level, including President Kabila. MONUC has also made public a summary of the results of its enquiry in its press conference of 27 October 2004 as well as in paragraph 14 of the Secretary General's report to the Security Council dated 31 December 2004 (S/2004/1034).

45. MONUC welcomes the arrest of Colonel Ilunga Ademars on 29 June 2005 by the Military Prosecutor's Office in Lubumbashi. The Mission has already met with the latter so as to facilitate the military enquiry and in particular to share the elements of the investigation which are in its possession. The pre-trial investigation of the case began on 4 July and fourteen charges have been laid against Colonel Ilunga Ademars, including crimes of torture, looting and murder. The accused has been detained since 10 July in the Kasapa prison in Lubumbashi.

IX. Conclusions and Recommendations

46. Despite the uncertainty surrounding the identity of the real instigators of the rebellion in Kilwa, there are strong suspicions that high-ranking military officers may be involved. It is hoped that in the context of the reform and the reunification of the Congolese army, the Ministry of Defence will conduct some preliminary investigations in order to verify those suspicions.

47. The arrest of Colonel Ademars constitutes an important step in the fight against impunity in the Democratic Republic of Congo. However, MONUC asks the Congolese authorities to take the necessary measures to ensure :

- that an in-depth and independent judicial investigation be conducted on the incident in Kilwa;
- that the court proceedings against Colonel Ademars be conducted fairly;
- that witnesses and victims present at the proceedings be protected by the authorities; and
- that other members of the military responsible and accessory to these crimes also be investigated.

48. The incident in Kilwa provides the opportunity to remind all international investors in the Democratic Republic of Congo of their responsibility to promote and respect human rights and principles of ethics when conducting their activities in the Democratic Republic of Congo. MONUC will continue to encourage Anvil Mining to take the necessary measures to prevent the reoccurrence of an incident such as that which occurred in Kilwa. In the same manner, MONUC also urges all international investors, in

particular those who work in the area of natural resources, to make public all their initiatives undertaken to ensure the implementation of the *United Nations Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, as well as the *OECD* (Organisation for Economic Co-operation and Development) *Guidelines for Multinational Enterprises*, and other principles relevant to the conduct of companies in combat zones or post-combat times, hereby ensuring that their activities are undertaken in conformity with the protection of human rights.

49. MONUC also intends to follow closely the situation experienced by ASADHO/Katanga and other NGOs which would have been subject to intimidations and threats following their investigative work concerning violations of human rights.

Annex 2 – RAID & ACIDH, Joint Report on Kilwa



ACIDH

Action Contre l'Impunité pour
les Droits Humains
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 : acidhrc@ic-lubum.cd

RAID

*Rights & Accountability
in Development*
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 Incident²

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 FARDC⁵. 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.

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 FARDC 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

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 of 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.

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 ACIDH, 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."

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: ammus2005@yahoo.fr. No 003/05 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' could 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:

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)

Annex 3 – Victims of the Kilwa incident (compiled by ACIDH)

Victim's Identity	Alleged Circumstances
1. M. Kabwebwe Kitanika Stany, alias Mutunakakwe; born: 1930; 8 children, customary law judge from Kilwa, Katange Quarter.	Killed 15 October 2004 on the Nsensele road by a bullet in his back and knifed in the stomach. He had been found in possession of a bag containing military uniforms that he wanted to save because they belonged to sailors who had been his lodgers.
2. M. Kapyia Kayombo Joseph, born: 1978, married, 1 child. Katenge Quarter.	Arrested on 15 October 2004 while trying to escape along the road to Nsensele. Taken to the Hotel Kabyata then disappeared.
3. M. Tabu Mwamba, born: 1983. Unmarried.	Arrested on 18 October 2004 and taken to Hotel Kabyata. Disappeared.
4. M. Biyuka Gauthier, married, 2 children; charcoal maker.	Killed on 15 October 2004. His body found behind the house of his first wife, near the latrine and covered by branches. Buried by the Kilwa Red Cross.
5. Mme Ngoy Kabango, born: 1950, 6 children, divorced.	Gunshot wound to her right leg and in the same circumstances as Gauthier Biyuka. After three months in the hospital at Kilwa she was transferred to Sendwe hospital, Lubumbashi.
6. M. Mungedi Kasongo, alias Musashina, born: 1957, 4 children; butcher.	Killed on 15 October 2004 at Nsensele in the same circumstances and at the same time as Mutunakakwe Mutunakakwe. ^{lvii}
7. Mme Kalumba Françoise, born: 1976; married. Nurse at the Kilwa Hospital.	Drowned on 14 October 2004 in Lake Mweru trying to flee Colonel Ademar's troops.
8. Kalembe Albertine, born: 1986, secondary school student.	Idem.
9. Kibeka Musonda, born: 1991. Secondary school student.	Idem.
10. M. Kyungu Damien, born: 1970; married 2 children.	Idem.
11. Jenovic Musonda, aged 10 months; son of Mme Françoise Kalumba.	Idem.
12. Mlle Mwika Fabiola, born: 1993. Primary school student.	Idem.
13. Musonda Juré, born: 2002.	Idem.
14. Donatien Monga, aged 2 months; son of Marie Katayi, who was rescued. Daughter of Kibeka Urbain.	Idem.
14. Mme Chola and baby son.	Idem.
15. Mme Mitwele.	Idem.
16. M. Kimanda; mentally disabled.	Killed on 15 October 2004. He was mistaken as an insurgent.
17. M. Ulimwengu Nombebe.	
18. Ulimwengu Yekuli.	
19. Mme Mukalayi Jacquie, born: 1938; married, 11 children. Katenge Quarter	She was shot on 15 October 2004 in her right leg when she was hiding in her house. She was in the Kilwa Hospital for five months and cared for by MSF/Belgique.
20. M. Mushinge alias Samba	Escaped summary execution at Nsensele.
21. M. Mandwe Severa, born at Mubanga, married, 2 children. Nsensele.	Arrested at Kilwa and summarily executed at Nsensele on 15 October 2004. He was trying to help a woman save her crates of beer. The woman gave soldiers some money and escaped with her life.
22. M. Mokoroboro.	Arrested and summarily executed on 15 October 2004
23. M. Kadilubilo.	After crossing the lake, he was detained in Zambia and then transferred first to Mpweto and then Lubumbashi. He was later released.
24. M. Mwilambwe Sanduku alias Ndekandeka, born: 1936, married, 4 children.	He was shot dead with four bullets to his chest by a soldier called Eric on 15 October 2004 in his plot of land at 136 Avenue de la Mission. The local Red Cross came and collected his body three days later.
25. M. Mwange Kapyia, born: 1970, married, 7 children.	Killed on 15 October 2004 on his family's plot of land.
26. M. Lwembe Kapyia.	Killed on 16 October 2004.
27. M. Yolamu Lwembe (grandfather of Mwange Kapyia).	He was injured by a wall that collapsed when his house was sprayed with bullets.
28. M. Shimpundu Pilati, 40 years old; married. Katutyi Quarter.	He was shot dead on 15 October 2004 at his sister's house where he had taken refuge.
29. M. David Kisala, 19 years old, unmarried, fisherman.	Arrested 15 October 2004 near Kilwa cemetery when he was returning from Mukupa. Taken to Colonel Ademar at the Hôtel Kabyata, who ordered him to be beaten. He was summarily executed during the night of 17 October 2004 at Nsensele.
30. M. Mitonga Shala, born: 1988. Primary school pupil. (EP Lusekelu).	
31. Mme Sophie, aged approximately 70 years. Resident Katutyi quarter.	Found dead from gunshot wounds in her home in Kilwa.
32. M. Kisimba Jérôme, born: 1942, with children, retired.	Arrested and tortured because he was believed to be an insurgent. Summarily executed at Nsensele 15 October 2004.
33. M. Senga Ndjibu, born: 1985, married, 1 child.	Arrested 15 October 2004, taken to the Hotel Kabyata and summarily executed at Nsensele.
34.	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.
35.	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.
36.	One pupil from the Bukongolo.
37.	The son of M. Kabuchungu, a teacher who is no longer at Kilwa.
38.	The bodies of two youths, which were left in the hospital morgue.
39.	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.

^{lvii} Two young men who were arrested near the hospital where initially they had taken refuge. Later went to verify the state of their homes.

Annex 4 – RAID’s notes of the account of the Kilwa incident given by Mike O’Sullivan, Anvil’s Vice President for Development, at Dikulushi Mine, DRC, 24 August 2005

At 2 am on 14 October he heard about the arrival in Kilwa of a group of rebels (who they knew from the start were not the heavily armed nor were they the feared Mai Mai rebels who continue to terrorize North Katanga). But Anvil staff heard what they now acknowledge exaggerated stories about the strength of the rebel group and their support. Mike O’Sullivan said that he received a communication from the military commander in Pweto requesting Anvil vehicles. ‘Maybe we could have refused, but given the gravity of the situation as it appeared to us at the time, and given our previous experience in March, we felt we couldn’t refuse.’ In view of the perceived gravity of the situation and the previous experience in March 2004, Mike O’Sullivan felt he had no choice but to comply with the request. A more formal request for Anvil to release its vehicles and to make seats available for soldiers on the planes was made later by the Governor of Katanga. Anvil acted on advice from the military that they should evacuate their staff from Dikulushi. Anvil gave logistical support but stress that they were not in a position to refuse. The request was followed up by written confirmation from the Government. Some vehicles were sent to Pweto to collect the soldiers. Kilwa was recaptured very quickly. The speed of the operation led Anvil to think that no major confrontation had occurred. They thought that the rebels must have run away. It was only over the last few months that Anvil has come to realize that some terrible things had happened in October 2004.

Both Mike O’Sullivan and Bill Turner claim that Anvil only became aware in June 2005 of the seriousness of the events. It is true that MONUC contacted them soon after the incident but only to check on the security situation in Kilwa. They were able to reassure MONUC that things were quiet. Anvil assumed that MONUC would investigate the situation which is their role.

It was only in June 2005 that Anvil managers became aware of ASADHO’s report. Mike O’Sullivan found a French version of their report. [At a meeting with Bill Turner on Saturday August at the Hotel Reka in Lubumbashi he admitted that in February 2005 he had received a letter from ACIDH about Anvil’s role in Kilwa incident. RAID’s Executive Director also reminded Bill Turner that she had sent an email in April 2004 about the incident and the allegations of complicity to which he had not responded.]

According to Anvil it was only in June 2005 that they received a credible report about the human rights violations. As a result they decided to instigate their own internal investigation and appointed a Perth based law firm with a Q.C to undertake an inquiry. The inquiry team worked for two and a half months visiting Dikulushi and taking affidavits.

Anvil managers stated that ASADHO had not contacted them about the report (although ASADHO had submitted its report to the Governor). Bill Turner added that after their internal inquiry they are satisfied that there is no evidence of complicity. The vehicles were commandeered they had no choice. What Anvil did was a reasonable course of action that saved lives. He stressed that Anvil was fully in compliance with the Voluntary Principles on Human Rights and Security and the OECD Guidelines for Multinational Enterprises but ‘they don’t go around advertising the fact like some’. Since the incident they have changed their security arrangements at Dikulushi. They have now contracted Group 4 Security.

Mike O’Sullivan stated that the first time the Anvil staff entered Kilwa after the incident was on Sunday 17 October 2004. They were aware that there was no food in the town. Most of the population had fled either to the Island or to villages to the South of Kilwa. They asked the military to stop the looting which was going on. Mike O’Sullivan stressed that they were unarmed and did not have any mandate to intervene, they are not the UN. They brought food and medicines from the mine which they gave to the nuns who run the Kilwa hospital where some of the wounded had been taken. They set up a bureau for missing persons with Anvil’s human resources unit to help people trace their relatives. Once the military returned Anvil’s vehicles they went to outlying villages to bring people back to Kilwa. Anvil’s barge was sent to collect people who had fled to Kilwa island.

The other reason given for the release of the vehicles to the military was to protect Anvil’s staff on site from harm. Mike O’Sullivan, Anvil’s Vice President for Development and senior site manager, described an incident in March 2004 when military in pursuit of *Mayi Mayi* rebels came to Dikulushi and demanded Anvil’s vehicles. He explained that he and two other members of staff had been threatened, punched and forced at gunpoint to hand over the vehicles. It had been a

frightening experience and RAID was told that Anvil had later protested vehemently about the incident to the Governor of Katanga, the Administrator of the Territory and the senior military commander. On this occasion Anvil had evacuated 100 people from the mine site and brought in troops from Lubumbashi.

Mike O'Sullivan described how Colonel Ademar Ilunga clamped down on looting by his troops. He explained that at the time of the March 2004 incident soldiers had looted property from villagers. Anvil reported this to Colonel Ademar who then took immediate disciplinary action against those responsible. This impressed Anvil who regarded him as a decent officer.

Annex 5 – RAID’s notes of interview with Pierre Mercier, Anvil Mining Offices, Lubumbashi, 22 November 2004

I went to Anvil’s HQ in Lubumbashi with two Congolese NGO partners: Jean Pierre Muteba, of Nouvelle Dynamique Syndicale (NDS) and Hubert Tsishwaka of Action contre l’impunité pour les droits humains (ACIDH). Mercier refused to allow the two Congolese to participate and told them quite angrily to leave. Anvil’s HQ was under Congolese military guard (PMs which have a bad record for torture and human rights abuses). The PM guard spoke to Hubert Tsishwaka who asked why they were guarding a private company’s offices. The PM replied because their General told them it belongs to chef d’état i.e. Kabila. Mercier told me that Jean Pierre Muteba, was ‘a trouble maker’. He kept me waiting in the garden outside – they have six large guard dogs which were not on leashes that leapt all over me.

He confirmed that there had been two incidents with rebels over the past seven months.

In March 2004 a Mai Mai group (aged between 10 – 19 years) armed with AK47s made a base in Dikulushi Village about 3 kms from the mine. They came up to the mine gates but did not enter the mine site.

There is a state of insecurity in the country. These groups need to be integrated into the army or disarmed.

He claimed that this group had killed an army major and then had fled. The problem is that they hide their arms and then reappear as civilians.

The most recent incident in October 2004 was very short-lived. A small group got to Kilwa on Thursday at about 2 am. Fired shots into the air. Only 10 soldiers were based in Kilwa and they ran away. The group broke into an arms store then handed out weapons to kids. The population fled because they were afraid of what might happen.

Anvil thought that the army would retake the town and so it help evacuate people: first to the nearest airstrip of Dubie and then to Lubumbashi. Anvil didn’t evacuate people to Zambia because the barge was on the over side of the lake. Anyway they feared that the Mai Mai might use the barge to escape. The Mai Mai stole radios, the batteries from lorries and speed boats and petrol.

Mercier said that the local people like Anvil. They’ve hired about 3-400 local people.

Whole incident was over in 48 hours. A bunch of 20 people claimed they’d come to liberate Katanga. They claimed they were 40, 000 strong and that they’d already captured towns like Lubumbashi. Pretext to recruit people.

The group never reached the mine. Strange but they had no interest. It shows that they were disorganized as we have plenty of food and other things useful to a rebel army. Only 55 kms from Kilwa. 2 expats and 2 Congolese stayed on for the whole time.

Mercier believes that they can expect another incident in the future.

When Anvil started the Dikulushi project they were 60 kms from the front line now conflict is not a problem. But as groups are still active they have asked to be given ‘force majeure’ as at present they are unable to explore the whole concession.

The October incident started on Thursday at 2 am and was all over by Friday at 6pm. On Saturday, Mercier returned to Kilwa and everything was back to normal.

Anvil leased planes took people to Lubumbashi, so they were empty and able to carry soldiers back. Dikulushi has 5 armed soldiers on site, plus local police and ANR (intelligence services). The OCC (the customs) are also present. Anvil employs 2 South African security guards who’ve trained the Congolese.

A whole family drowned when they were escaping by boat to Kilwa island (inside Zambian territory) when it capsized. Island has no food. Anvil brought people back on the barge.

In future, Anvil won't evacuate to Lubumbashi, not necessary. They will only evacuate to Dubie. He stressed how poor the local population was and how deprived. Most survive by fishing. He expressed anger about the actions of the rebels but none about the military reprisals. He claimed to know the local people well. When I suggested that as many 'innocent people' had got arrested and were still being held by the security services and denied access to their families or lawyers couldn't he go to see them and help secure the release of people he knew. He rejected that idea out of hand and said I could go and ask the ANR if I wanted but they would never let me in.

The level of Mai Mai activity has reduced in the region. But there are isolated groups all over and they may not even know that their leaders are negotiating a disarmament deal.

The local population of Kilwa about 50,000.

Patricia Feeney