

# RAID

*Rights & Accountability in Development*

## **Congolese Military Judge Calls for the Prosecution of Former Anvil Mining Staff for Complicity in War Crimes**

### **BACKGROUND BRIEF ON THE KILWA INCIDENT AND ANVIL MINING**

15 October 2006

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#### **About Anvil Mining**

Anvil Mining Limited is incorporated in the Northwest Territories, Canada<sup>1</sup> with its business managed from its Perth office. Anvil is listed on the Toronto and Australian Stock Exchanges<sup>2</sup>. Anvil Mining Limited, through its wholly owned subsidiaries, Anvil Management NL (Australia) and Anvil Mining Holdings Limited (United Kingdom), has a 90 per cent holding in Anvil Mining Congo SARL, which owns Dikulushi Mine.

#### **The UN's October 2005 report on the Kilwa Incident**

The UN's Monitoring Mission in the DRC, MONUC, described how, according to local sources, more than 100 people were killed.<sup>3</sup> MONUC gathered information on 73 deaths following the counter-offensive launched on 15 October 2004 against rebels by members of the Armed Forces of the Democratic Republic of Congo's (FARDC) 62<sup>nd</sup> Brigade, which was headed by Colonel Ilunga Ademars.

According to MONUC, the operation had been authorized by the Kinshasa authorities, which bypassed the command of the Lubumbashi based in the 6th Military Region.<sup>4</sup> Prior to the offensive, MONUC estimated that 90 per cent of the population had fled the fighting on 14 October 2004.<sup>5</sup>

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".<sup>6</sup> 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) – which managed "to recruit some young people locally –

estimated to be less than 100 persons”.<sup>7</sup> The rebels were led by Alain Kazadi Makalayi, a 20-year old fisherman from the town of Pweto.<sup>8</sup>

In a confrontation lasting two hours, the FARDC did not sustain any casualties.<sup>9</sup> Afterwards, the FARDC conducted house-to-house searches, which lasted until the afternoon of 16 October. On the evening of 16 October, Alain Kazadi was arrested after receiving gunshot wounds to his hand and back.<sup>10</sup> Two prisoners, including Kazadi, later died while in hospital. According to the military, they succumbed to their injuries.<sup>11</sup>

During the operation, the FARDC carried out summary executions and other human rights violations.<sup>12</sup> MONUC found that the FARDC were also responsible for acts of pillage, extortion, and arbitrary detention.<sup>13</sup> 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.<sup>14</sup> MONUC notes that it received eyewitness and survivor reports of summary executions.<sup>15</sup>

### ***Testimony of the father of one of the victims***

The Congolese NGOs and RAID have spoken to many of the victims and their relatives about the Kilwa incident. The following is an excerpt from one of the testimonies:

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 was covered was my son’s...<sup>16</sup>

### ***Allegations concerning Anvil Mining***

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

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 – into the area of Nsensele; there, MONUC located two shallow graves and one individual grave. Anvil Mining has confirmed to MONUC that the FARDC did use the company’s vehicles but Anvil has denied that the vehicles were used to transport corpses or pillaged goods. Anvil Mining has also acknowledged that planes chartered by the company to evacuate its personnel to Lubumbashi were used on 14 and 15 October to transport approximately 150 soldiers in the area of operation. These planes

were also used to transport to Lubumbashi some of the suspects arrested by the army following its counter-offensive in Kilwa. MONUC was able to confirm that three drivers of the company Anvil Mining drove the vehicles used by the FARDC.<sup>17</sup> 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.<sup>18</sup>

### ***Anvil's claim that its vehicles and facilities were requisitioned***

On 24 August 2005, during a visit by RAID and other non-governmental organizations (NGOs) to the Dikulushi mine, 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...as described in the Official Message No. 550/0350/BUR/AT/PTO/004 of 16 October 2004 by the Administrator of the Territory of Pweto....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.<sup>19</sup>

According to Anvil's report of the NGO visit, the letter confirmed "that the vehicles and airplane seats were requisitioned during the Kilwa incident".<sup>20</sup> In the same document, Anvil makes reference to a provision of the Congolese Law: Ordinance Law 112/FP of 11 June 1940 concerning requisition.<sup>21</sup>

On 24 August 2005, in discussion with RAID, Mike O'Sullivan, Anvil's Vice President for Development, gave more details about an earlier incident. In March 2004 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.<sup>22</sup> In response to the March incident, three Anvil vehicles were made available on request to the army to help with logistics, and Anvil's shift transport vehicle was used by the army to move airlifted soldiers to Dikulushi village.<sup>23</sup>

### ***The ABC Four Corners' documentary***

The Australian Broadcasting Corporation's (ABC) Four Corners' documentary entitled "The Kilwa Incident" was broadcast on 6 June 2005. The program included a videotaped interview with Anvil's Chief Executive Officer, Bill Turner.

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.

Mr. Turner confirmed 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 stated:

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.<sup>24</sup>

When asked in the Four Corners interview how he learnt of events at Kilwa, Mr. Turner replied:

[I]t was actually Mike O'Sullivan who 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?<sup>25</sup>

Mr. Turner continued, explaining who Cedric was:

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.<sup>26</sup>

Mr. Turner, in a part of the Four Corners interview, which was not televised, also stated:

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.<sup>27</sup>

In a news release issued the day after the ABC broadcast, Anvil described the allegations made against it as "deplorable, and without foundation".<sup>28</sup> The company stated that "Anvil had no knowledge of what was planned for the military operation, and was not involved in the military operation in any way".

Days after the ABC broadcast, RAID and others called on World Bank President Wolfowitz to withdraw the Multilateral Investment Guarantee Agency's (MIGA) political risk guarantee for the Dikulushi project, which was approved approximately one month prior to the Kilwa incident despite the concerns that had been raised by RAID and others. In response, President Wolfowitz ordered a full audit by the World Bank's Compliance Advisor Ombudsman (CAO).

### ***Conclusions of the World Bank's Compliance Advisor Ombudsman***<sup>29</sup>

The CAO's audit was published in October 2005 and concluded the following (verbatim extracts):

- Neither the underwriting nor the risk management processes explicitly consider the risks that the presence of, or security provision for, a project could indirectly lead to adverse impacts on the local community.<sup>30</sup>
- MIGA did not fully understand the implications for its client of implementing the principles nor assess whether its client had the capacity to do so. Neither MIGA nor Anvil recognized the critical distinction between conventional security, which deals with securing the safety and well-being of personnel and assets, and the Voluntary Principles[on Security and Human Rights], which recognise that conventional security provision can, in and of itself, present risks to the well-being of communities.<sup>31</sup>
- It is unacceptable that this disconnect exists—between MIGA’s expecting clients to warrant or represent that they will address important matters of policy or practice, without assessing whether clients have the capacity to either understand or implement requirements.<sup>32</sup>
- Anvil’s news releases on these [March and October 2004] incidents immediately afterwards noted factual aspects relating to evacuation of personnel, interruption of production, and subsequent resumption of operations. The October 15 and 18 [2004] news releases, which were sent to MIGA, noted the rebel group activities in Kilwa and the evacuation of some mine personnel in accordance with Anvil’s standard procedures but made no reference to forceful requisitioning of vehicles, looting, or human rights abuses.<sup>33</sup>

#### **Other investigations**

- July 2005: The Congolese Military Prosecuting Authorities opened their inquiries. On 12 October 2006, a military judge recommended that Colonel Ademar Ilunga and eight other members of the FARDC and former employees of Anvil’s Congolese subsidiary should be tried on charges related to the commission of, or complicity in, war crimes.
- September 2005: Australian law firm, Slater and Gordon, acting on behalf of RAID and Congolese non-governmental organizations called on the Australian Federal Police to investigate whether there was evidence of Anvil’s complicity in the commission of crimes against humanity or war crimes under Chapter 8 of the Australian Criminal Code Act of 1995. Australia’s law mirrors the International Criminal Court. In September 2005, Australia’s Department of Foreign Affairs and Trade referred the matter to the Australian Federal Police (AFP). Their investigation is ongoing.

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<sup>1</sup> Anvil Mining Ltd, Annual Information Form for Financial Year ended December 31, 2004, p.4. Anvil Mining Ltd was incorporated pursuant to the *Business Corporations Act* (Northwest Territories) under the name Dikulushi Resources Ltd on January 8, 2004. The company changed its name to Anvil Mining Ltd on March 12, 2004.

<sup>2</sup> [http://www.anvil.com.au/about\\_profile.shtml](http://www.anvil.com.au/about_profile.shtml): Anvil Mining Ltd was listed on the Toronto Stock Exchange on 2 June 2004 (see listing for Anvil at [www.tsx.com](http://www.tsx.com)) and on the Australian Stock Exchange on the same day (Australian Stock Exchange, Anvil Mining Ltd – 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 Ltd’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 Ltd’s registered and head office in Australia is given as Level 2, 35 Ventnor Avenue, West Pert, WA 6005

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(Annual Information Form). Anvil's website lists Anvil Mining Ltd's address as Level 2, 38 Richardson Street, West Perth WA 6005, Australia (PO Box 1654, West Perth, WA, 6872, Australia). Anvil Mining Ltd's Annual information Form lists subsidiary offices at 14 Lukafu, Quartier Golf, Lubumbashi, Democratic Republic of Congo (DRC). Anvil Mining Ltd's website lists the address for Anvil Mining Congo SARL: 8034 Avenue Nyota, Quartier Golf, Lubumbashi, DRC.

<sup>3</sup> 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. (The unauthorised translation is by RAID.) Hereafter, "MONUC report".

<sup>4</sup> MONUC report, para. 16.

<sup>5</sup> MONUC report, para. 15.

<sup>6</sup> MONUC report, para. 2.

<sup>7</sup> MONUC report, para. 3.

<sup>8</sup> MONUC report, para. 12.

<sup>9</sup> MONUC report, para. 17.

<sup>10</sup> MONUC report, para. 18.

<sup>11</sup> MONUC report, para. 30.

<sup>12</sup> MONUC report, para. 17.

<sup>13</sup> MONUC report, para. 2.

<sup>14</sup> '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*).

<sup>15</sup> MONUC report, paras. 26-29.

<sup>16</sup> ACIDH/RAID Joint Report 'Kilwa – A Year After the Massacre of October 2004'; October 2005.

<sup>17</sup> 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.

<sup>18</sup> MONUC report, para. 36.

<sup>19</sup> 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.

<sup>20</sup> Anvil Mining Ltd: Report on the Visit by NGOs to the Dikulushi Mine, DRC, 30 August 2005.

<sup>21</sup> Petition of Kilwa Traditional Leaders, June 2005.

<sup>22</sup> RAID interview with Mike O'Sullivan, Dikulushi Mine, 25 August 2005.

<sup>23</sup> Anvil Mining Congo, Note for the Record, 16 March 2004.

<sup>24</sup> Four Corners taped interview with Bill Turner, full transcript, p. 50.

<sup>25</sup> Four Corners taped interview with Bill Turner, full transcript, p. 47.

<sup>26</sup> *Ibid*, p. 48.

<sup>27</sup> Four Corners taped interview with Bill Turner, full transcript, p. 50.

<sup>28</sup> Anvil Mining Ltd, 'Anvil Mining Limited Response to Television Report of June 6, 2005', *News Release*, 7 June 2005.

<sup>29</sup> CAO Audit of MIGA's Due diligence of the Dikulushi Copper-Silver Mining Project in The Democratic Republic of the Congo Final Report, November 2005; Office of the Compliance Advisor Ombudsman for the International Finance Corporation and Multilateral Investment Guarantee Agency. Hereafter "CAO audit".

<sup>30</sup> CAO audit, Section 2.2.1, p. 8.

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<sup>31</sup> CAO audit, Executive Summary, p. ii.

<sup>32</sup> CAO audit, Section 3.3.4, p. 21.

<sup>33</sup> CAO audit, Section 2.1.3, p. 5.