

Global Witness / Rights and Accountability in Development (RAID)

Military court of appeal succumbs to political interference in Kilwa trial 21 December 2007

Today's decision by the military court of appeal in Lubumbashi, Democratic Republic of Congo, not to allow an appeal against the acquittal of nine Congolese soldiers and three employees of Anvil Mining in relation to the Kilwa massacre amounts to a blatant denial of the victims' right to a fair hearing.

Global Witness and RAID described the decision as the culmination of a pattern of political interference and irregularities designed to protect those responsible for the crimes committed in Kilwa.

The nine soldiers and three Anvil Mining employees had been charged respectively with war crimes and complicity in war crimes in relation to the deaths of at least 73 civilians in Kilwa, in Katanga province, in October 2004. On 28 June 2007, a military court had acquitted all the defendants of charges relating to the Kilwa events, in a trial which failed to conform to international standards of fairness (see ACIDH, ASADHO/Katanga, Global Witness, RAID, *Kilwa trial: a denial of justice*, 17 July 2007) and which was criticised by the United Nations High Commissioner for Human Rights, Louise Arbour.

The military prosecutor and the victims and relatives of victims filed an appeal. On 9 December 2007, the *Haute cour militaire* (military appeal court) began its hearings in Lubumbashi, the capital of Katanga province.

On 21 December 2007, the appeal court ruled that the events in Kilwa fell outside the scope of the appeal, and that it would only consider the prosecutor's appeal in relation to the sentences imposed on two military defendants relating to events in Pweto, unconnected to those of Kilwa.

The appeal could have provided an opportunity to rectify the injustices and errors which had been committed in the earlier stages of the trial and to restore faith in the independence of the Congolese judiciary. Instead, it has been marred by further irregularities, including:

- The original prosecutor's appeal, which would have triggered a review of all the evidence, was subsequently and improperly modified by another prosecutor, who took no part in the original trial, and had been explicitly prohibited from doing so as his rank is lower than that of one of the military defendants. This prosecutor restricted the grounds of the appeal to consideration of the sentences handed down against two of the military defendants, Colonel Ademar Ilunga and Captain Sadiaka, for crimes unrelated to the Kilwa incident. This was a blatant attempt to narrow the remit of the appeal and exclude all references to events in Kilwa. The appeal court ruled that this restricted, and amended, appeal was admissible, despite efforts by the victims' lawyers to expose the irregularities.

- The appeal court did not duly notify witnesses about the proceedings. In a letter to the President of the *Haute cour militaire* on 14 December 2007, several witnesses and relatives of victims in Lubumbashi complained that neither they nor witnesses in Kilwa had received any official document from the court advising them of the hearings. In the same letter, they complained about the way they had been treated, both in the original trial and in relation to the first appeal hearings.
- Sources present at the appeal hearings reported that the military judges did not appear to have any intention of holding a hearing in Kilwa or even reconsidering the evidence.
- The appeal court judges questioned the standing of one of the lawyers acting on behalf of the victims, claiming that it was not compatible with his role as a member of a human rights organisation.
- Lawyers for the victims were unable to obtain a copy of the case-file in advance of the hearings. At least two lawyers who approached the court registrar were told that the case-file was not available at the court, because the registrar was keeping it in his private hotel room. The registrar told them that he would allow them to see it only after the hearing of 18 December, at which the scope of the appeal was debated.

These developments demonstrate that the pattern of interference in the course of justice, documented in the chronology of events in the report *Kilwa trial: a denial of justice*, has been replicated at the appeal stage. The convergence of political and business interests in this case, at the highest levels, (described in the above report), has ensured that the victims of grave human rights violations in Kilwa have been denied justice.

Global Witness and RAID are awaiting written documentation of the appeal proceedings before formulating a more detailed response.