

## **The DRC urged to hold accountable the company Anvil Mining for its involvement in the “Kilwa massacre”**

### **A first step towards justice for the victims of the “Kilwa massacre”**

The ICJ has welcomed the recent decision of the African Commission on Human and Peoples' Rights (ACHPR) that found the Democratic Republic of Congo (DRC) responsible for the massacre of 70 people in Kilwa in 2004 and urged the DRC State to pay 2.5 million US dollars compensation to eight victims and their families who filed the complaint to the Commission.

The African Commission also acknowledged the involvement of mining company Anvil Mining, an Australian-Canadian company (later bought by the Chinese company MinMetals) operating a copper and silver mine in Dikulushi, located 50 kilometers from Kilwa, that would have provided logistical support to soldiers who bombarded civilians. This decision sheds light on the corporate legal responsibility for human rights abuses, particularly in the extractive industry sector, and suggests legal avenues for action against Anvil for alleged abuses.

In its decision, the ACHPR stressed “the need and legal imperative for entities engaged in extractive industries to undertake their activities with due regard to the rights of host communities. They should at least avoid engaging in activities that violate rights of community members in their areas of operations. This includes the non-participation or non-support in the perpetration of violations of human and peoples' rights.” (unofficial translation from French).

The Commission also held that the DRC government had not complied with its obligation to ensure the protection of rights guaranteed in the African Charter since “not only it did not investigate and punish the participation of the mining company Anvil, but also it did not provide compensation to victims against the company for the role it played in the perpetration of the violations.” (unofficial translation from French).

The "Kilwa massacre" occurred in October 2004 as part of an offensive launched in the city of Kilwa by the DRC army to repress a rebellion led by a group of armed individuals. The offensive resulted in numerous cases of arbitrary detention and extrajudicial or summary execution among other human rights violations documented by the United Nations Mission in the DRC (MONUC) in its [report](#) on human rights violations committed by the DRC armed forces. Anvil Mining, which operates in the same area, was allegedly involved in some of these activities, for instance by providing DRC soldiers with transport vehicles and an airplane. The MONUC reports that “Anvil Mining as confirmed to MONUC that FARDC (DRC armed forces) did use the company’s vehicles (...). 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.” Anvil Mining also “acknowledged to have contributed to the payment of a certain number of soldiers”. Furthermore, on the implication of the company on alleged massacre, the MONUC reveals that the “Commander of the 6<sup>th</sup> 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”.

The African Commission made a number of recommendations to the DRC, including the construction of a memorial, the exhumation of bodies buried in mass graves to carry out dignified burials and the reconstruction of infrastructures destroyed during clashes. The Commission also indicated that the DRC government must identify and compensate victims and their families.

The Commission’s judgements represents the first time that victims of this massacre as well as their families have seen progress in their pursuit of justice after 13 years of legal action. The pursuit of justice was initiated in the Democratic Republic of Congo, continued in Australia, where the company is domiciled, and subsequently in Canada where it is also established. Indeed, until now none of the State’s agents or employees of the company Anvil Mining have been brought to justice for the alleged violations. The trial at the DRC military court resulted in the acquittal of the soldiers and the three employees of Anvil Mining charged. This trial has attracted criticism from a number of civil society organizations as well as the then UN High Commissioner for Human Rights, Louise Arbour, because of the lack of impartiality of the tribunal and other violations of international fair trial standards.

The UN Mapping Report documenting the most serious violations of human rights and international humanitarian law committed within the territory of the DRC (1993-2003) released in August 2010, stated that “ the Kilwa case demonstrates the difficulty in proving the legal responsibility of private companies in the perpetration of serious human rights abuses and violations of international humanitarian law, even when they supply arms or logistical support ot armed groups.” The UN Report also underlined “the case could have set an important precedent in terms of corporate accountability.”

Because access to fair, effective and impartial justice in the DRC is generally elusive, the victims and their families also filed a complaint in Australia in 2005 and the Australian Federal Police launched an inquiry to determine if there was evidence that the company was complicit in war crimes and crimes against humanity. However, this attempt proved to be unsuccessful when the criminal investigation was dismissed for lack of evidence. In Canada, a class action was filed in 2010 by a group of victims requesting compensation for the company’s role in human rights violations occurred in Kilwa. The case was not considered on the merits and was dismissed by the Supreme Court of Canada, which indicated that the Canadian courts lacked jurisdiction to adjudicate on the case.

In the face of these successive failures and the prevailing impunity since 2004 for violations in Kilwa, the communication sent to the African Commission filed by Rights and Accountability in Development (RAID), Action Against Impunity for Human Rights (ACIDH) and the Institute for Human Rights and Development in Africa (IHRDA) on behalf of eight victims appeared to be the last formal means to seek justice.

In its [decision](#), the ACHPR urges the DRC government "to take all diligent measures to prosecute and punish State’s agents and Anvil Mining personnel involved in the violations established".

Because it comes from the African Commission the decision is not necessarily judicially enforceable. However, the decision in favor of the victims is a real step towards the recognition of the responsibility of the DRC State and the company Anvil Mining for its logistical support during these confrontations. The challenge now, following this historic decision, will be to ensure implementation by the DRC. In addition, the opportunities may now be open to

victims and their families to seek remedy and reparation, including prosecution against responsible State authorities and the company Anvil Mining, or at least any responsible personnel or and executive officers.

The involvement of Anvil Mining has been recognized in the [report](#) of the United Nations Mission in the DRC (MONUC), but the company argues that it was compelled to assist the DRC army. To date, all attempts at civil and criminal action against the company have failed. This decision acknowledges that Anvil Mining played a role in the Kilwa massacres and urges the prosecution of the personnel involved.

The decision will hopefully serve to support complaints from victims and their families in the DRC or in another country where the company is incorporated or does business.