



28 June 2021

H.E. Félix-Antoine Tshisekedi Tshilombo
President of the Democratic Republic of Congo
Palais de la Nation
Gombe, Kinshasa
DR Congo

Re: Democratic Republic of Congo in violation of the African Commission's decision regarding human rights abuses against civilians in Kilwa

Your Excellency Mr. President,

We are writing to bring to your attention a landmark 2017 [decision](#) of the African Commission on Human and People's Rights (African Commission) regarding the victims of the Kilwa massacre in Haut-Katanga province, which has not been implemented by the Democratic Republic of Congo (DRC). In your current role as Chairperson of the African Union, and in light of your pledge to promote human rights and uphold African institutions, we urge your government to move swiftly to implement this decision and rectify the actions of the previous DRC government, which has failed to comply.

The African Commission's decision ([Communication 393/10](#)) relates to abuses by the Congolese army perpetrated against inhabitants of the town of Kilwa in October 2004. During a military operation to crush a group of lightly armed rebels, the Congolese army indiscriminately shelled civilians, summarily executed people and disappeared many others. In total, over 70 people were killed. The soldiers received transportation and other logistical support from an Australian-Canadian mining company, Anvil Mining, which operated a nearby copper and silver mine.

In November 2010, following failed attempts to seek justice in the DRC, eight of the victims brought a complaint to the African Commission with the assistance of the undersigned organizations. After careful deliberations, the African Commission issued its decision, which found the Congolese State had violated nine human rights provisions of the *African Charter on Human and Peoples' Rights* (*African Charter*) in relation to the 2004 military operation in Kilwa. The Commission decided that the Congolese State needed to provide US \$4.36 million in compensation to the eight victims; identify and compensate other victims of the attack and their families not party to the complaint; issue a formal apology; exhume and rebury with dignity the victims dumped in mass grave; construct a memorial; provide trauma counselling; and rebuild the town school, hospital and other structures destroyed during the attack.

The African Commission also called on the Congolese State to launch new criminal investigations and to take "all due measures to prosecute and punish agents of the State and Anvil Mining Company staff" involved in the violations. The DRC was given until the 17 December 2017 to inform the Commission of the steps it had taken to implement the recommendations. So far, to our knowledge, no action has been taken to implement the decision.

Implementing the African Commission's decision is a legal obligation for the Congolese State. Your government has the obligation to respect, protect, promote and fulfil human rights as enshrined in the Congolese Constitution, and as part of its commitments under the *African Charter* and other

regional and international human rights instruments. The failure to implement the African Commission's decision on Kilwa places the DRC in violation of its obligations.

During your inaugural speech as President of the DRC, you committed to "guarantee to each citizen the respect and the exercise of their fundamental rights" and since taking office, you have repeatedly vowed to restore justice and the rule of law. The government you recently appointed provides an important opportunity to implement these commitments and to address past human rights violations committed against Congolese civilians.

Not only is implementing the decision a legal obligation for the Congolese State, it is also the right thing to do, not just for the people of Kilwa, but for all African peoples whose human rights may be violated. The *African Charter* is a fundamental pillar of the African human rights system and protects the human rights of all those who live on the African continent. The African Commission plays a crucial role in upholding the *African Charter*.

We call on you to show leadership in upholding African institutions and the *African Charter*. Your election as the 2021 Chairperson of the African Union is a historic occasion for the Congolese State to lead by example and to champion the African Union's objective to promote and protect human and peoples' rights.

We applaud the significant step your government took towards reinforcing justice and safeguarding human rights by ratifying the *Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights* (African Court) in December 2020. Yet, accepting the jurisdiction of the African Court comes with the responsibility to ensure respect for and compliance with the *African Charter*.

Non-compliance with the *African Charter* may be referred to the African Court for adjudication. Rather than the DRC facing a judgement against it by the African Court for non-compliance, we hope you will agree that implementing the African Commission's decision is a better course of action.

For the past 17 years, the victims of the Kilwa massacre and their families have fought a tireless campaign for justice. The decision of the African Commission provided recognition of the harms they had suffered, and brought hope they could rebuild their lives. Some victims have since passed away and will never receive the reparation they were owed. The Congolese government's failure, to date, to implement the decision is crushing that hope and we urge you to rectify this.

We respectfully request your government to adopt a clear strategy to provide long-overdue justice and reparation to the Kilwa victims and implement the Commission's decision.

We would welcome any opportunity to discuss these important matters with you or members of your administration in person.

Yours sincerely,

- African Resources Watch (AFREWATCH)
- Rights and Accountability in Development (RAID)
- Institute for Human Rights and Development in Africa (IHRDA)
- Action against Impunity for Human Rights (ACIDH)

cc: Rose Mutombo Kiese, Minister of Justice, DRC
Fabrice Albert Puela, Minister of Human Rights, DRC