

DEMOCRATIC REPUBLIC OF CONGO

The internal armed conflict continued with the involvement of several African countries and numerous domestic groups. The Government, which controls approximately half of the territory, functioned without a Constitution. In this harsh context, the judiciary suffered from a lack of independence, in part due to poor infrastructure and resources. The Court of Military Order, highly influenced by the executive, continued to try civilians, notwithstanding pledges by the President to curtail the practice. Furthermore, this court maintained jurisdiction over matters unrelated to the military. Some rebel groups reportedly used the judicial system to arrest individuals on false charges to extract money and property from these persons. Several reports indicated that higher RCD/Goma authorities punished judges who refused to participate in such plots.

BACKGROUND

The Democratic Republic of Congo (known for part of its history as Zaire) gained independence from Belgium in 1960. On 24 May 1997, Laurent Desiré Kabila proclaimed himself head of state and government, following the overthrow of President Mobutu Sese Seko. The text that functions as a constitution is the Constitutional Act of Transition (*Acte Constitutionnel de Transition*-ACT) adopted in April 1994. A new Constitution has been drafted, but it has yet to be adopted. There is no division of powers. The Constituent and Legislative Assembly, for which the President selects members, only has advisory powers. The judiciary remained under the control of the executive and prone to rampant corruption. On 16 January 2001, President Laurent Desiré Kabila was assassinated in confused circumstances in Kinshasa. His son, Major-General Joseph Kabila, commander of the DRC land forces was sworn in as President. Joseph Kabila said that he would prepare the conditions for free and fair elections at a future date and promised to promote political pluralism and economic liberalisation.

At least nine armed internal, international and internationalised internal conflicts were active, with the participation of at least six national armies and 21 irregular groups. The conflict reached its current levels in 1998, when then-President Kabila tried to expel the Rwandan military forces that had collaborated with him in overthrowing President Mobutu. Congolese Tutsis as well as the Governments of Burundi, Rwanda and Uganda all depended on the Rwandan military presence for protection against armed groups operating in the eastern part of the country.

Although the rationale provided by foreign governments for the presence of their armies in the DRC relates to security concerns, an underlying motive for the participation of belligerents on all sides is exploitation of the vast natural resources in the country. In a report released on 17 April 2001, the UN accused Uganda and Rwanda of systematically looting the DRC and called for trade embargoes to be imposed on the two countries. According to the report, there was a direct link between the level of military activity in the DRC and the level of exploitation of natural resources. Other countries, including Zimbabwe, were said to have similar material interests in the country.

Lusaka Agreements.

In July 1999 in Lusaka, Zambia, the DRC, along with Angola, Namibia, Rwanda, Uganda and Zimbabwe, signed a cease-fire agreement to end the war between all belligerents in the DRC. Subsequently, the main opposition armed groups, the MLC and the RCD, also signed the Lusaka Agreement. The agreement provides for the normalisation of the DRC's borders, the control of illicit traffic of arms and the infiltration of armed groups, the holding of an inter-Congolese dialogue and the disarmament of militias and armed groups. It also created a Joint Military Commission (JMC) composed of two representatives of each party and proposed an "appropriate force" to be established and deployed by the United Nations. MONUC, the UN Mission in the DRC, was deployed in November 1999. On 15 June 2001, the UN Security Council unanimously extended the mandate of the MONUC until 15 June 2002. After years of widespread disregard for the cease-fire from all parts of the conflict, since January 2001 the cease-fire along the confrontation line has essentially been respected. On 15 June 2001, the UN Security Council unanimously approved Resolution 1355, which noted with satisfaction the current state of cease-fire, but demanded that Ugandan, Rwandan and other foreign forces take the necessary steps to accelerate their withdrawal, and condemned incursions by armed groups into Rwanda and Burundi.

On 4 May 2001, the DRC government and the three main rebel factions signed a declaration of 14 principles for an Inter-Congolese National Dialogue. In August 2001, the meeting of the Inter-Congolese dialogue resulted in a Declaration of Commitment in which the parties promised to liberalise political activities, protect human rights and release prisoners of war.

In his October 2001 report to the UN Security Council on MONUC, the UN Secretary-General described the overall situation in the DRC as continuing "to develop in a largely positive direction". MONUC was said to have finished the second phase of its deployment in the country, namely, to monitor the cease-fire and oversee the completion of disengagement of forces and their redeployment to new defensive positions. However, outbreaks of fighting have continued, if not intensified, in the east of the country. The third phase of the Lusaka agreements is the total withdrawal of all foreign forces from the territory of the DRC and the disarmament and demobilisation of the armed groups. In his October 2001 report, the UN Secretary-General asked the Governments to increase efforts to stop the fighting in the eastern part of the country by ceasing any military and logistical support to the armed groups operating in that area. Finally, the UN Secretary-General welcomed the withdrawal of Namibia and many of the Ugandan troops from the DRC. The UN Security Council will decide on the future of phase III after verifying that the parties are committed to continuing the peace process. This move would involve the deployment of UN troops and military observers towards the east of the country. By October 2001, MONUC was composed of approximately 2'400 officers, including 1'868 troops and 397 military observers.

HUMAN RIGHTS AND HUMANITARIAN LAW ISSUES

According to a US aid agency, the number of lives claimed by the three-year-war is approaching 3 million. The war has destroyed much of the country's infrastructure. There are approximately two million internally displaced persons, half of whom are without assistance. According to the World Health Organisation (WHO) and the United Nations Children's Fund (UNICEF), most of the 50 million people of the DRC live on US\$ 0.20 per day, and lack proper nutrition. The World Food Programme has estimated that 16 million Congolese have a critical need for food.

The most serious violations of human rights in the Government-controlled territories are against public freedoms. According to the UN Secretary-General, the new Government has achieved some

progress in establishing human rights laws and standards. Some non-judicial detention centres, which had been infamous for torture and extra-judicial executions, have been closed. President Kabila imposed a moratorium on the execution of death sentences in March 2001. Furthermore, in May 2001, the African Association for the Defence of Human Rights (ASAHDO), a human rights NGO and ICJ affiliated, was authorised to reopen its Kinshasa office after it had been closed in May 1998. However, human rights abuses continue. Although the Government adopted a new law liberalising political activities, registered political parties have been prevented from operating. Human rights defenders have been detained for speaking out on political matters and police harassment of political opponents is common. There are reports of torture in detention centres. Irregular trials continued. Eighty detainees allegedly involved in the murder of former President Laurent-Desiré Kabila have been denied medical care and regular meals. Regarding breaches of international humanitarian law, the Armed Forces are responsible for the bombing of civilian populations.

In the territory controlled by rebel movements, the human rights situation has remained grim and a climate of terror persists imposed by the rebel forces (RCD-ML, RCD-Bunia and the ML) and the armies of Rwanda, Uganda and, to a lesser extent, Burundi. Unlawful killing of civilians, arbitrary arrests, arbitrary detention, torture and rape were widespread. In the Aru, Ituri Province, 750 civilians were reportedly killed during a six-week period. The motives for the massacres were not clear. Human rights defenders continued to be particularly targeted. RCD soldiers have carried out rape of women and young girls. Forced recruitment of young men continues to be a matter of concern. In the North and South Kivu provinces, the Mayi-Mayi, Interahamwe and other militias supporting the Government have carried out numerous massacres, brutal repression and, according to the UN Secretary-General, have conducted a "reign of terror".

JUDICIARY

The Constitutional Act of Transition of the Mobutu Regime and Laurent Kabila's Decree Law Number three provide for an independent judiciary. In practice, however, the executive branch manipulates the judiciary. The Government has failed to provide the legal framework to ensure the independence of the judiciary. The DRC is still awaiting a judicial reform for this purpose, which should have been approved by 1997.

The President enjoys the power to dismiss and replace judges, magistrates and officials of the Public Prosecutor's Office, following a petition of the Supreme Council of the Judiciary. However, the Council is not functioning, and the ruling political party effectively exercises its powers. The executive branch in fact carries out the administration of justice.

Many obstacles have hindered judicial independence, including absence of economic autonomy of the judicial bodies, the proclivity of executive and legislative authorities to exert pressure on the judiciary, and the prevailing corruption of judges and magistrates. Corruption was facilitated by very low salaries or, in certain cases, complete lack of a salary.

Structure

The civilian judiciary is composed of lower courts, appellate courts, the Supreme Court and the Court of State Security. There are also military tribunals that exercise jurisdiction over civilians. Parallel to the official legal apparatus, an informal judicial power has formed. Security services, the militias, the local leaders and warlords, the rebels and other factions exercise such informal judicial

power. The civilian judiciary is largely dysfunctional. Its functions have been usurped by military courts, which try almost all cases

The Civil and Criminal Codes are based on Belgian and customary law. The law provides for the right to expeditious public trial, the presumption of innocence, and legal counsel at all stages of proceedings. However, the Government continues to disrespect these rights in practice. Court-appointed counsel at state expense in capital cases, and when requested by courts, is provided by the law. However, the Government only provides counsel at its discretion.

In 1998, the Laurent Kabila Government dismissed 315 magistrates on the grounds of the deterioration of the justice system (see *Attacks on Justice 1998*).

Resources

The judiciary in the DRC suffers from desperate financial conditions. Judges are paid poorly and only on an intermittent basis. There are substantial shortages of personnel, supplies, and infrastructure. Financial autonomy of judicial institutions is not provided and pervasive corruption continues to affect the judiciary. These grave circumstances affect the other judicial officers, including court clerks.

The Court of Military Order

In 1997, the Court of Military Order (*Cour d'Ordre Militaire*) was created by decree (Decree-Law N° 019). Although the Court of Military Order was established to ensure discipline within the army, its ill-defined jurisdiction has encouraged abusive trials of civilians for crimes such as armed robbery, mismanagement of public funds, or any activity perceived to be a threat to state security. Furthermore, the Court of Military Order has diminished the authority of the civilian judiciary and usurped its jurisdiction, by trying all variety of cases, including those that clearly would fall under the jurisdiction of regular tribunals.

Military tribunals also convict and order the execution of military persons charged with armed robbery, murder, inciting mutiny, espionage, and looting while in a state of mutiny (Although as mentioned above, President Kabila imposed a moratorium on the execution of death sentences). Persons convicted by military tribunals have previously been executed publicly in ceremonies held in stadiums and presided over by senior government officials, such as provincial governors.

Defendants do not have right to appeal to a higher court or access to defence counsel. This court systematically violates the rules of procedure, on the pretext that the DRC is still in a state of war, and that consequently, the existing legal procedures cannot be respected. The Executive branch exercises great influence over the Court of Military Order, as a result of which many members of the opposition have been tried and sentenced to prison.

Death sentences resulting from summary military trials became increasingly frequent during 2000. In November 2000, the Court of Military Order sentenced to death a former presidential security advisor and eight of his subordinates, a sentence that was executed before the moratorium was implemented. During the 2000 visit of the UN High Commissioner for Human Rights to the DRC, then-President Kabila (Sr.) promised that the military no longer would try civilian cases. However, this pledge was not honoured either by him or his successor.

Rebel-controlled areas

In the territories occupied by the various rebel factions, particularly the RCD/Goma, the system of justice remained essentially non-functional. Judges seldom were paid their salaries. There were credible reports of judges accepting bribes in return for favourable decisions. RCD/Goma officials and others with influence reportedly used the judicial system to arrest individuals on false charges so as to extract money and property from these detainees. Credible sources claim that higher RCD/Goma authorities reprimanded judges who refused to participate in such schemes. There were also documented cases of indiscriminate military justice by which individuals suspected of treason were executed without a trial.

Officially, the RCD/Goma established measures to investigate and punish rebel soldiers guilty of committing atrocities against civilian populations. However, the initiative remained largely ignored and ineffective and there were no reports that the RCD/Goma had tried, convicted, or punished any of its troops for committing atrocities.

The rebel movement RCD established a *Conseil de Guerre Opérationnelle* to judge soldiers accused of robbery or insubordination. It is comparable to the Court of Military Order but has double jurisdiction. According to lawyers in Bukavu, hearings are private. However, soldiers are arrested and prosecuted only for common crimes or for military faults, and not for humanitarian law violations.

CASES

Maître Richard Bondo and Maître Jean Marie N'Kwebe {lawyers}: Mr. Bondo and Mr. N'Kwebe are President and Vice-President of the Congolese NGO *Avocats sans Frontières* (ASF). On 8 March 2001, the National Council of the Bar Association struck the two lawyers from its rolls. Many Congolese NGOs claimed the disbarment illegal and unlawful and formed a coalition to denounce the Bar's decision (Nr.9/CNO/RSO/21). The NGOs contended that the decision was motivated by an inconsequential conflict between certain lawyers and their clients and that the blackmailing threats of powerful clients resulted to the disbarment of the two lawyers.

Maître N'Sii Luanda {lawyer}: Mr. Luanda is President of the Committee of Observers for Human Rights CODHO. On 5 June 2001, he was arrested and ten days later was transferred to the penitentiary centre CPRK where he was held incommunicado. He was accused of having contacts with person posing a threat to state security. Maître N'Sii was freed on 7 September 2001.

Kayembe Kasuku {lawyer}: The lawyer was allegedly arrested by the National Information Agency (ANR) and taken to prison, where he was stripped, tortured and beaten to the point that he lost consciousness. He was released and had to spend several days in intensive care in Kinshasa.

Balanda Mikuin Leliel {former President of the Supreme Court}: Mr. Balanda Mikuin Leliel is a professor at the University of Kinshasa. On 5 January 2001, he was arrested by ANR for having been in contact with MONUC. He was released on 19 January 2000.