

Democratic Republic of Congo

A new Constitution, elaborated and approved by the President of the Republic, is still pending for approval in a popular referendum. Only some parts of the new Constitution were made public. The government continues to use the military courts to harass and persecute opposition politicians, while a poorly funded and widely corrupt system of regular courts continues to have a diminished jurisdiction.

Since power was taken over by Mr. Laurent Desiré Kabila and his troops of the Rebel Alliance of Democratic Forces for the Liberation of Congo (ADFL) in 1997, war and political conflict has continued in the Democratic Republic of Congo (DRC). The country is now militarily divided either side of a stabilisation line between the East and the West. The rebel movement Alliance for a Democratic Congo (Rassemblement pour le Congo Démocratique -RCD) receives military assistance from the neighbouring countries of Rwanda and Uganda.

President Kabila proclaimed himself head of state and government on 24 May 1997. During his inaugural address on 29 May 1997 he took it upon himself to "have full power until the adoption of a Constitution" and he promised that elections would be held in July 1999. In the summer of 1998, under the pretext of the existence of a military rebellion supported by Rwanda and Uganda, President Kabila announced that elections were to be postponed until all foreign military forces attempting to oust his government had withdrawn from the country. However, in May 1999 a peace accord was signed in Lybia between the DRC, Uganda, Eritrea and Sudan, which led to the withdrawal of troops from Goma. The transition to democracy that President Kabila announced when he assumed power has not yet begun.

Due to the difficulties faced by the current government in winning legitimacy, a strong civil society, willing to play an important role in the peace and democratisation process, has been developing. This new force has been recognised as an important actor and as a new element to take into account in the social and political evolution of the country.

A new Constitution was elaborated and approved by President Kabila in November 1998 and is still awaiting ratification by national referendum.

The Cabinet is composed of the National Executive Council, appointed by the President. Legislative activity has been suspended pending the adoption of the new Constitution and the holding of elections. In fact, legislative elections have never been held in this country, as those which had been scheduled under former President Mobutu never took place because his government was ousted in 1997.

Human Rights Background

After years of non-cooperation on the part of the Congolese Government, which has denied him permission to visit the country since 1997, the United Nations Special Rapporteur on the Situation of Human Rights in the Democratic Republic of Congo (DRC) made two visits to the country in 1999, one from 16 to 23 February and a second from 27 August to 6 September. The Special Rapporteur was permitted to visit, inter alia, police stations and military compounds. The authorities, however, did not respond to allegations of human rights violations or to urgent actions made by the Special Rapporteur. Government forces and rebel groups merely denied these allegations. However, the Minister for Human Rights of the

government of the Democratic Republic of Congo admitted that there have been excesses and that abuses have been committed by the security forces which have resulted in the loss of life and harassment of human rights advocates.

The army continues to have a strong influence. According to reliable reports, there are 13 security, military and police forces in total, apparently all authorised to make arrests.

The Right to Life and the Right to Physical and Psychological Integrity

During 1999, a total of 100 executions were reported. Forced disappearances were perpetrated by the security forces which also employed torture against journalists, political leaders, human rights activists, university professors and refugees from the Republic of Congo. There were also reported cases of women being raped in detention centres.

The prison conditions are harsh. There is no health care and prisoners, particularly women and children, suffer from malnutrition.

International humanitarian law was frequently violated throughout the year. Attacks on the civilian population, by bombing towns, occurred and claimed many lives in January and May 1999. Such attacks were perpetrated both by the government and the rebel forces of the RCD. Allegations of serious attacks against civilians in Kasika in 1998 and Makobola in 1999 were initially denied, before being later acknowledged as unfortunate mistakes.

Deportations, mutilation and the rape of women as a means of warfare are common practices.

The Right to Liberty

Many cases of persons being detained on political grounds have been reported, although President Kabila claims that there are no political detainees in the DRC. Political leaders, journalists, soldiers, students, traditional chiefs, priests and pastors, attorneys acting in their professional capacity and refugees are constantly being arrested without apparent reason. These arrests are often made by the State Security Council for "collusion with the rebels". Even judges and magistrates have been arrested under this charge.

Political Parties

Since the taking of power by President Kabila, all political parties have been banned, except the ruling ADFL. Opposition leaders who dared to disregard this prohibition have been treated as "mobutistes" (Mobutu supporters) or threatened with trial before the Military Court, or even arrested, tortured and imprisoned. Even advocates of opposition parties have been arrested by security forces.

In January 1998, the sentencing of Mr. Kalele and Mr. Kabanda, members of an opposition party, by the Military Court opened the way for further condemnations of opposition leaders before that court for acts which normally fall within the competence of the ordinary judicial system. There are many reported cases of political opposition leaders who have been harassed or arrested by the security forces in order to prevent them from exercising the basic right to freely express their political opinion.

Freedom of Expression and Association

Journalists have been harassed for exercising their professional duties and one was sentenced in March 1999 to four years imprisonment by the Court of Military Order for "divulging state secrets". Licences for radio and television channels remain difficult to obtain and require authorisation. On 26 June 1999, the Minister of Justice stated that the government and the security forces would not hesitate in taking severe action against any person, especially journalists, who "unjustly slandered the head of state or a member of the government".

Non-governmental organisations (NGO's) and labour organisations are regarded as enemies of the state, or are simply assimilated to political parties. Thirty heads of NGO's were arrested during 1999 and many more were harassed. In January 2000, a large group of human rights activists were arrested and taken to the Agence Nationale de Renseignements (ANR), the security service in Bukavu. They were arrested because of their activities regarding human rights and because they had called for a general peaceful strike to protest the fact that workers' wages were not being paid, they were being taxed by the Rwandese forces and the continuing presence in eastern Congo of foreign Rwandan and Ugandan troops. Women's rights activists were also arrested by security forces and taken to the "Bureau 2" of the detention centre in Goma, where they were beaten and ill-treated. Some of them were further harassed in their homes.

The Judiciary

The state lacks structures and institutions, and President Kabila continues to rule by decree. A draft Constitution was, however, elaborated by the government in March 1999, but only parts of it have been published. The judiciary is still under the influence of the executive and corruption is widespread.

While Decree-Law N° 3 provides for the independence of judges, magistrates and the Public Prosecutor's Office, the President of the Republic has the power to replace them and, where appropriate, dismiss them on the proposal of the Supreme Council of the Judiciary. However, the Council was still not functioning at the time of writing, and its responsibilities were being discharged by Mr. Kabila's political party. The International Commission of Jurists' affiliate ASADHO (Association Africaine de Défense des Droits de l'Homme) observed that the justice system is in fact being administered by the head of state, some ministers and the security departments on a permanent basis.

Structure

The court structure includes a system of lower courts, appellate courts and the Supreme Court. There is also a Court of State Security, as well as military tribunals that exercise jurisdiction over civilians.

An informal judicial authority has developed on the side. It is applied by various security services, the ADFL militias, the local leaders and war lords, the rebels and other factions of the fragmented Congolese society.

State of the Independence of the Judiciary

The independence of the judiciary was formally recognised under the Mobutu regime, and later by President Kabila's Decree Law N° 3. In practice, however, the judiciary tends to be manipulated by the executive branch. There are no mechanisms to ensure the application of

the principle of the separation of powers. The Democratic Republic of Congo is still waiting for a judicial reform to this end which should have been approved by President Kabila in 1997.

Such judicial independence has not been achieved in the country due to some long-standing obstacles: a lack of financial autonomy of the judicial institutions, the tendency of executive and legislative leaders to exert pressure on the judiciary in the context of generalised corruption, and the widespread corruption of judges and magistrates as a consequence of their extremely low salaries or indeed, lack of salary altogether. The judiciary is, furthermore, strongly influenced by the executive.

Under the pretext of a breakdown of the proper functioning of the judiciary, the Kabila Government dismissed 315 magistrates in November 1998, hiring others (see Attacks on Justice 1998).

Resources

Article 97 of the proposed Constitution provides for the independence of judges. However, judges in the DRC are subject to desperate financial conditions. Salaries are extremely low and it has been reported that some judges have been unpaid for extensive periods of time. Judge's salaries in many instances have not been paid since 1996 and, in any case, range between US\$ 3 and US\$ 30 per month. Generally speaking, judges are still working without proper facilities or offices, and law libraries are not always accessible. As a consequence of the lack of financial autonomy of judicial institutions widespread corruption has emerged within the judiciary. Furthermore, the strained circumstances affect all other judicial staff, including court clerks, duty officers and other judicial personnel.

The Military Court

A special Military Court (Cour d'Ordre Militaire) was created by decree (Decree-Law N° 019) on 23 August 1997. Although the Military Court was established to improve discipline within the army, its jurisdiction is ill-defined which has led to abusive trials of civilians for crimes such as armed robbery or activities that are perceived to be a threat to state security. The Military Court does not afford the right of appeal to a higher court or access to defence counsel. It has also begun to sentence civilians for non-violent offences with political connotations. Although the territorial competence of the Military Court was limited only to the province of Bas-Congo and the town of Kinshasa, its competence has been extended to other provinces of the Republic.

The court's decisions are heavily influenced by the executive. It systematically violates the rules of procedure, which constitute the very core of the right to legal counsel, on the grounds that the DRC is still in a state of war, and that accordingly, the existing legal procedures cannot be respected. The Military Court has curtailed the authority of the ordinary and legal tribunals and usurped their jurisdiction, by trying all types of cases, including those that fall within the jurisdiction of regular courts. In this manner, many members of the opposition have been tried and sentenced to prison.

The military police has jurisdiction over members of the armed forces. However, there were numerous cases of civilians tried for political offences with limited rights of due process,

which resulted in some instances in their execution. The court has ordered the execution of 250 people in its two years of existence.

The rebel movement RCD has established a Conseil de Guerre Opérationnelle to try soldiers charged with robbery or insubordination. It is similar to the Military Court but has dual jurisdiction. According to lawyers in Bukavu, trials are secret and inaccessible. However, soldiers are arrested and tried only for ordinary crimes or for military offences, and not for war crimes or human rights violations because they are needed in war time.

Cases

M. Balanda (judge): Judge Balanda was arrested on 9 January 2000 by the CNS (Centre National de Sécurité) in Kinshasa. His arrest was confirmed by the commander of the security forces. He has been charged with "subversion", for having had contacts with the United Nations Mission in Congo. He was released almost two weeks later, without trial.

Lambert S. Djunga and Pierre Risasa (lawyers): Both lawyers are partners in the Kinshasa Office of the Mitchell & Associates law firm from the United States of America. They were tried before the Military Court of Kinshasa, on charges of "treason in time of war", an offence that carries the death penalty. The two lawyers were arrested on 5 March 1999. It seems that the arrest was connected to the law firm's legal representation of Banro American Resources, INC, a mining company that alleges that it owned mining concessions in the Democratic Republic of Congo (DRC). When the concessions were appropriated by the DRC Government, the company initiated arbitration proceedings against the government. Mr. Djunga and Risasa were arrested shortly after the legal proceedings were brought.

The two lawyers were obviously prosecuted for representing their clients in legal proceedings. This is contrary to Article 18 of the 1990 UN Basic Principles on the Role of Lawyers, which states that lawyers shall not be identified with their clients or their client's causes.

The two lawyers were finally acquitted.