

Human Rights Watch World Report 1998

DEMOCRATIC REPUBLIC OF CONGO (Formerly Zaire)

Human Rights Developments

The rebel Alliance of Democratic Forces for the Liberation of Congo (ADFL) ousted President Mobutu of the then Zaire and seized power in mid-May after a seven-month campaign. The Mobutu government's moves to strip the ethnic Tutsi Banyamulenge of their citizenship and drive them from the country sparked the rebellion, which was later joined by other groups. Even before the war erupted, however, the country was on the verge of disintegration. The failed transition to democracy and Mobutu's rule through kleptocracy had left the country with a collapsed economy, an unruly military, a president whose term in office had long since expired, and an unelected parliament.

An intricate regional crisis added to the potency of Congo's internal political and ethnic conflict. An estimated one million refugees from neighboring Rwanda had settled in eastern Congo, and among them were thousands of armed exiles from the former Rwandan Armed Forces (ex-FAR) and its militia the Interahamwe. The refugees were mainly Hutu who had fled to Congo fearing retribution for the 1994 genocide during which more than 500,000 minority Tutsis and moderate Hutus were killed. The killing frenzy only stopped after rebels of the Tutsi-dominated Rwanda Patriotic Army (RPA) toppled the Rwandan government which had orchestrated the genocide. Mobutu's government helped the remnants of the ex-FAR to rearm, and persistently refused to cooperate with the International Criminal Tribunal for Rwanda in apprehending and extraditing persons indicted for genocide.

Rwanda's government seized on the Banyamulenge uprising as an opportunity to disband the refugee border camps and destroy the ex-FAR and Interahamwe. RPA troops took part in the rebel offensive, and the ADFL also received military and diplomatic support from the governments of Uganda, and Angola, among other regional powers.

While the fighting forced an estimated 600,000 refugees back into Rwanda, hundreds of thousands of others fled further west into Congo, among them tens of thousands of armed elements. The United Nation's High Commissioner for Refugees (UNHCR) estimated that 213,000 refugees remained unaccounted for as of the last quarter of 1997. Human Rights Watch investigations and others have gathered evidence indicating that fleeing refugees were pursued relentlessly, falling victim to human rights abuses committed by all parties to the conflict. The deserting and demoralized soldiers of the former Zairian army (FAZ) looted supplies and raped scores of civilians in their flight, including Congolese as well as refugees, and destroyed schools, churches, and clinics. Likewise, armed elements from the ex-FAR and its militia used force and random killings to prevent other refugees from repatriating to Rwanda and tended to use unarmed refugees as human shields in their flight, leading to many deaths of civilians in cross fire. The ADFL troops, and their Rwandan RPA backers, in turn, engaged in extensive and systematic massacres of refugees, many of whom were hunted down on the run and at temporary encampments. The killers often forced the local population to clean up massacre sites. An exacerbation of local ethnic tensions and violence caused civil war to return to North and South Kivu in 1997, as remnants of the ex-FAR allied themselves with local rebel groups, attacking government forces and local Tutsi populations.

On May 17, 1997, the day Kinshasa fell to its troops, the ADFL issued a declaration by which it suspended the transitional constitution, disbanded the transitional parliament and government, and appointed its own chairman, Laurent DÈsirÈ Kabila, as president of the republic. A constitutional decree proclaimed by the new president on May 28 empowered him to legislate by decrees, head the government, and appoint and dismiss ministers and judges. Despite this latter provision, the decree acknowledged the independence of the judiciary. Congo's continued obligations under human rights and humanitarian treaties to which it was party were expressly acknowledged. Upon taking office, President Kabila promised a transitional agenda that would lead to legislative and presidential elections in two years. The first step in that process was taken when in mid-October he issued a decree establishing a commission to draft the new constitution.

As a political movement, the ADFL undertakes in its statutes to be open to the affiliation of other political parties, organizations of civil society, as well as individuals, who would adhere to its "ideological base." This is defined in the statutes as the ADFL's belief that all power emanates from the people and is founded on inalienable human rights. In practice, political parties were asked to dissolve themselves into the alliance in order to be part of the government, and members of existing opposition parties were appointed to government positions in their individual capacities.

The government had yet to integrate ADFL soldiers from different regions, ethnic backgrounds, or from neighboring countries under a unified command structure, and frequent frictions and confrontations continued to occur between military units of different backgrounds. The problem of deteriorating discipline, particularly after the failure of the government in securing the timely payment of salaries to the military, contributed in turn to growing insecurity as soldiers attempted to extort money from civilians, or indulged in armed banditry

Incidents in which indiscriminate gunfire took a high toll abounded all over Congo, including the killing, on the night of July 6 to 7, 1997, of fifteen persons in Kinshasa by a patrol of unruly ADFL soldiers. A confrontation on the night of August 21-22 in the Ceta military camp, between soldiers distinguished by the Kinshasa press as "Tutsi" and "Congolese," left at least three soldiers dead. On August 30, soldiers fired in the air to control a large crowd of teenagers in the municipal swimming pool of N'Sele, Kinshasa. In the resulting panic, at least twenty-four young men and women died.

As it took over, the ADFL arrested and confiscated the property of prominent dignitaries of the Mobutu era, in many cases without due process of law. There were about fifty detainees of this category in Kinshasa by August 1997. Six of whom were interviewed by Human Rights Watch in an August meeting in a Kinshasa detention center.

In Lubumbashi, there were eighty-nine detainees, about twenty of whom were prominent politicians, in the cells attached to the headquarters of the new political police, the National Intelligence Agency (ANR), when a local rights group visited it on July 31, 1997. Many were detained for months following denunciations arising from civil and criminal disputes without appearing before a court. Conditions were harsh: prisoners slept on the cemented floors, looked poorly nourished, and sanitation was lacking. Political prisoners who spoke to Human Rights Watch, including a former governor, a former mayor of Lubumbashi, and the former chairman of Mobutu's party, said they were not informed of the reasons for their detention,

and alleged that prisoners held in connection to their suspected roles in civil and criminal cases were routinely beaten.

The ADFL banned political activities throughout the country. In Kinshasa, government troops periodically attacked the headquarters of political parties with popular followings, dispersed their peaceful marches with gunfire, and abducted, detained, and tortured their militants. Soon after Kabila's inauguration, government troops dispersed demonstrations by supporters of the Union for Democracy and Social Progress (UDPS) protesting the exclusion of the UDPS, and its leader Etienne Tshisekedi, from the transitional government. Shortly after Tshisekedi's participation as principal speaker in a political rally at Kinshasa University, troops descended on his residence late on June 26, and arrested him and his wife and held them overnight. Authorities also arrested and badly tortured a student, Richard Mpiana Kalenga, who they suspected was an organizer of the rally.

On July 25, a group of soldiers opened fire on demonstrators returning from a peaceful march that the Unified Lumumbist Party (PALU) organized to press for more political participation. One PALU militant was killed, and many were injured. In the afternoon of the same day, soldiers raided the headquarters of PALU, which is also the residence of Antoine Gizenga, a veteran politician and PALU president. They beat party militants with iron bars, belts, and gun butts before taking them into custody. They locked the elderly Gizenga and his wife in a bathroom, and then went on a rampage, looting the family's personal possessions and ransacking the property of the party.

The bustling private press of Kinshasa maintained a critical tone vis-a-vis the new government that reflected an independence it had successfully fought for under Mobutu. While initially tolerating this, authorities cracked down on coverage of "sensitive" information such as security issues or corruption in government ranks. Polydor Mubunga, editor of the *Le Phare*, was placed under house arrest in mid-September after publishing an article claiming that Kabila was recruiting his own presidential guard. Ali Kalonga, director of the official Congolese Press Agency, was detained for weeks in August 1998 after he authorized a story about the suspension and house arrest of the finance minister following allegations of corruption. The government also took measures which, if fully implemented, would threaten the very existence of the private media. In late May, one of the first decisions of the new information minister was to ban advertising through privately-owned radio and television stations. On August 18, the national police issued an order banning the sale of newspapers on the main streets of Kinshasa. The private press considered this as a "declaration of war" as its distribution was entirely dependent on street vendors.

The Right to Monitor

Groups who stepped in to denounce abuses by agents of the new government quickly became the target of punitive measures. In Kinshasa, at least three rights activists were detained for short periods in separate incidents in retaliation for a joint campaign by rights groups for detained Mobutists and other political prisoners to be charged or released. In the eastern town of Kindu, the military commander ordered the closure of the premises of the rights group Haki Za Binadamu, after he received a letter in which it denounced the unlawful detention of suspects in criminal and civil cases in the military camp. Two of Haki's workers were detained and tortured: as a result of which one fell into a coma and was hospitalized. In response to the outcry that followed, the authorities in the province accused them of

involvement in a "plot"-to provide false information to the U.N. team investigating the massacres of refugees that occurred in the vicinity of the town during the war.

The Role of the International Community

United Nations

By the time the refugee camps of eastern Congo were dismantled by the ADFL attacks in October 1996, the international community had channeled an estimated U.S. \$2.5 billion into relief for the Rwandan refugees in the region. This effort was seriously undermined by the failure of the U.N. and world powers to enforce the separation of armed exiles, suspected of crimes against humanity, from bona fide refugees.

With the rebellion in eastern Congo rapidly developing into a generalized civil war, the U.N. Security Council endorsed on February 18, 1997, a five-point plan prepared by Mohammed Sahnoun, the joint U.N. and Organization of African Unity (OAU) special envoy for the Great Lakes region, which called for an immediate end to the fighting; the withdrawal of all foreign forces, including mercenaries; reaffirmation of the territorial integrity of all states in the region; protection and security for all refugees, and the convening of an international conference to resolve conflicts in the region. Sahnoun's diplomatic efforts to mediate a peaceful settlement for the war on the basis of this plan were hampered by the ADFL's outright military success.

On March 6, 1997 the U.N. high commissioner for human rights asked the special rapporteur for Zaire (now Congo), to investigate allegations of refugee massacres in ADFL-held areas. Following a short field mission, the rapporteur, Roberto Garreton of Chile, on April 2 issued a short report, identifying more than forty possible massacre sites and calling for further investigations through the mechanisms of the Human Rights Commission. The commission resolved in mid-April that the special rapporteur, jointly with the special rapporteur on extrajudicial, summary or arbitrary executions, and a member of the Working Group on Disappearances, carry out a mission to investigate the allegations of massacres and other issues related to the situation in that country since September 1996.

The ADFL, however, adamantly refused to allow the team to enter territories under its control to conduct its probe and said it rejected the team's leader, Roberto Garreton, apparently because of his earlier report. The U.N.'s subsequent agreement to this condition led Human Rights Watch, together with other human rights organizations, to write, on June 13, to the U.N. secretary-general pointing out the dangers involved in allowing countries under investigation to choose their own investigators. In subsequent discussions with the Congolese government, the U.N. failed to persuade it to accept the team mandated by the commission. To overcome the delays created by the government's veto on the team's leader, the Security Council agreed to the secretary-general's proposal, on July, 8, to create an investigative team under his own authority. The team thus formed arrived in Kinshasa on August 24 to a hostile reception.

When the U.N. team attempted to launch the investigation in the western city of Mbandaka, the government blocked it and said the investigation could only focus on the east. An impasse followed, leading the U.N. to recall the three main investigators to New York "for consultations." In late October, U.S. ambassador to the U.N. Bill Richardson and President Kabila reached an agreement in Kinshasa that was expected to clear the way for the probe to

begin in early November. Kabila agreed to drop territorial limitation on the coverage of the probe, and the U.N. agreed that the team would not recommend any punitive measures or interfere in Congo's internal affairs.

The Congo continued to host a U.N. human rights field office. Agreed to in August 1996 under the previous government, the office was originally proposed by special rapporteur GarretÛn to assist him in collecting information and maintaining contact with the government. The primary mandate of the office was to monitor human rights abuses, though some technical cooperation activities were envisaged. With only one professional from the U.N. Human Rights Center assigned to Kinshasa, the office was understaffed and underresourced at a time when its presence could have played a vital role in the promotion and protection of human rights in the country.

Organization of African Unity

South Africa's initiative, in February 1997, to host indirect talks between representatives of the ADFL and an advisor of President Mobutu ultimately led to direct talks between Kabila and Mobutu in May. The thrust of South Africa's diplomatic drive was to get Mobutu to relinquish power in exchange for a commitment from the ADFL to form a broad-based transitional authority. Battlefield advances, however, allowed the ADFL to prevail without concessions.

The ouster of Mobutu created an atmosphere of euphoria in much of the region, which peaked at the 33rd session of the OAU summit, held in early June in Harare, during which leaders welcomed Kabila and the ADFL's triumph. This in turn led to strong expressions of support for Kabila when he came under increasing international pressure to cooperate with the U.N. probe and to commit himself to early democratic elections. On May 27, President Mandela and Uganda's Yoweri Museveni accused Western governments of "demonizing" Kabila and defended his orders to prohibit political activities. Museveni reminded journalists that he had taken similar action against political parties in his own country and said he believed that African societies, which he characterized as preindustrial, were "not ready" for multiparty democracy.

European Union

The European Union (E.U.) suspended economic assistance to Mobutu's government in 1992, citing Article 5 of the Lome Convention IV (1989) which makes respect for human rights and democratic principles an "essential element" of the convention. The European Commission however disbursed an exceptional humanitarian aid package of U.S.\$309.81 million between 1992 and 1996 for rehabilitation and infrastructure programs, mainly through nongovernmental organizations (NGOs) and civil organizations of the health sector. The E.U. also earmarked an additional \$35 million for electoral assistance and set up an European Electoral Unit for that purpose, although most of these funds were not disbursed due to the Mobutu government's decision to postpone the elections.

The E.U. issued a declaration on May 23, on the transfer of power in Congo, in which it stipulated what it expected from the new authorities, namely: that they respect the electoral calendar announced by Kabila, and commit themselves to democracy and the respect of human rights. The E.U. also urged the new government to protect refugees and allow humanitarian access to them, and to allow the U.N. probe to go ahead as a matter of urgency.

The signals from the E.U. and some of its member states, however, were mixed. The humanitarian aid commissioner, Emma Bonino, kept the pressure on the new government by publicly denouncing its denial of humanitarian access to refugees, and by repeatedly and publicly pressing for a neutral investigation of reports of refugee massacres. But in a statement made on May 28, E.U. Development Commissioner Joao de Deus Pinheiro said that Kabila was right in setting law and order and stabilization as his first priority, agreeing on this with President Mandela. Belgium, for its part, indicated its willingness to resume its development aid to Congo, following a visit by Belgian Secretary of State for Development Cooperation Reginald Moreels in early August. The troika of European Union foreign ministers also visited Kinshasa in early August. The delegation was headed by current E.U. President Jacques Poos, Dutch Foreign Minister Hans Van Mierlo, British Deputy Foreign Minister Tony Lloyd, and a representative of the European Commission. It welcomed the end of the dictatorial rule of Mobutu and the arrival of a new government that had expressed its intention to found its policy on the principles of democracy, respect of human rights, and the rule of law. On the question of refugees, the ministerial troika welcomed the government's acceptance of the U.N. investigative mission and raised the question of access by humanitarian organizations to refugees and the security of their personnel. The delegation said it would recommend, in its report to the E.U. Council of Ministers, the gradual resumption of structural aid to the new government in light of the prevailing "positive political environment."

In response to the restriction of the U.N.'s delegation to the capital, Kinshasa, for nearly four weeks, the E.U.'s Presidency had sent a letter to Congo's foreign minister asking an immediate lifting of the obstacles blocking the team. Should this fact-finding mission not succeed, it said, in a press release, "the new prospects of cooperation between the European Union and the Democratic Republic of Congo would be jeopardized."

The Luxembourg Presidency spoke to the European Parliament on September 24, declaring that there was no rift in the E.U. about cooperation with Congo, only that cooperation would henceforth be conditional on respect for human rights. Kabila quickly reacted describing the E.U. position as a plot "hatched by Western powers" acting under the cover of humanitarian agencies.

United States

The U.S. suspended its economic assistance to Congo in 1991 under statutory provisions prohibiting foreign aid to countries in default on their loans to the U.S. government. This followed decades of unconditional U.S. support for Mobutu, its longtime Cold War ally, during which the U.S. continued to pour in millions of dollars and to facilitate World Bank and International Monetary Fund support while Mobutu and his cronies openly siphoned these funds into their own pockets.

Suspicious were rife in Congo at the outbreak of the war that the United States was backing the rebels, leading to a wave of anti-American feelings in late 1996. These suspicions were in part rooted in the knowledge of the considerable political, economic, and military support that the U.S. extended to Rwanda, which in turn had provided decisive military assistance to the ADFL's campaign. In congressional hearings in December 1996, Vincent Kern, Deputy Assistant Secretary of Defense, downplayed U.S. military assistance to Rwanda, describing it as the "softer, kinder, gentler" side of military training, and said it didn't include instruction

for combat situations and basic military training. However, under further NGO, press, and congressional scrutiny, the Department of Defense issued a report on August 19, 1997 which detailed one program of basic military training, including combat skills, of some Rwandan troops partially conducted by the U.S. Army Special Forces.

In a July 1997 interview, Rwanda's strongman and minister of defense, Paul Kagame, said he informed the State Department officials in August 1996 that Rwanda was ready to dismantle the camps if the international community failed to remove them from the border area, and, according to him, the U.S. "took decisions to let it happen."

Following the attack on the camps, and the return of hundreds of thousands of refugees to Rwanda, the U.S. embassy in Kigali agreed with the Rwandan government's estimates that only "tens of thousands" of refugees remained behind, instead of estimates of 200,000 to 450,000 made by humanitarian agencies operating on the ground. By the time a general agreement was reached on the higher estimate, a plan for a multinational force to assist the refugees and facilitate their repatriation was abandoned.

The U.S. subsequently criticized the ADFL for the large-scale abuses alleged in areas under its control, and in statements in January 1997, the U.S. ambassador to Congo agreed with the Mobutu government's charge that the country was being "attacked" by Rwanda and Uganda, contradicting assertions from the U.S. embassy in Kigali that "there was no proof" of Rwandan military presence in Congo. Unwilling to hold Rwanda accountable for its alleged share of responsibility in these killings, the U.S., however, stepped up its pressure on the ADFL as of March and April, when the U.S. demanded guarantees from the ADFL of access to the refugees by aid workers and insisted on access for human rights investigators.

In the meantime, the administration obtained the agreement of Congress to a limited assistance of \$10 million, to be allocated mainly in grants to UNICEF's immunization program, NGO assistance, and to the reform of the legal system. In late September, spokesman Jamie Rubin of the U.S. State Department warned President Kabila that the U.S. government's relations with Kinshasa "will be determined to some significant extent by his willingness to allow the U.N. human rights team to do its job."

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