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Human Rights in Africa: Review of 2019 - Democratic Republic of the Congo [AFR 01/1352/2020]

Hundreds of prisoners of conscience and other detainees were released, and some exiled activists were allowed to return to the country. However, the authorities continued to restrict the right to freedoms of expression, association and assembly. The armed conflict continued, resulting in more than 2000 civilian deaths and at least 1 million were forcibly displaced. While some steps were taken to bring perpetrators to justice for conflict-related human rights abuses, the authorities failed to hold to account the most senior officials associated with crimes under international law, and impunity remained widespread. Most of the population was denied basic rights like health, while some progress was made when the government introduced free primary education for all.

Background

In December 2018, long-delayed presidential, legislative and provincial elections took place. The Electoral Commission [withdrew the voting rights] of over 1 million people in eastern and western areas, on security grounds as well as for health reasons connected to the Ebola epidemic. The decision, which cancelled presidential elections and postponed legislative and provincial elections in those areas, sparked anger among the affected communities, and intensified the tensions already surrounding the elections.

On 10 January, the Independent National Electoral Commission released the presidential provisional election results and declared Félix-Antoine Tshisekedi Tshilombo the new president. On 15 January, leaked data obtained from the Electoral Commission's servers and tallies suggested that an opposition candidate, Martin Fayulu Madidi, received the most votes. In response, the South African Development Community (SADC) and the African Union convened a high-level meeting on the crisis [following which] regional heads of state and government concluded that there were “serious doubts” as to the [validity] of the provisional results and urged the authorities to delay the final results, a request which was rejected. On 20 January, the Constitutional Court rejected Martin Fayulu Madidi's request for a recount, confirming Félix-Antoine Tshisekedi Tshilombo as the winner.

The Common Front for the Congo (FCC), former President Kabila’s coalition, won the majority of parliamentary seats at the national and provincial levels, retaining control of the National Assembly, the Senate, and provincial assemblies and governments in 25 of the 26 provinces. President Tshisekedi’s government which was inaugurated in September was led by the FCC whose members made up a majority, a fact which could limit the new President’s ability to carry out crucial reforms, including in relation to the justice system. Violent clashes between supporters of the FCC and the Course for Change, the President’s coalition, continued against a backdrop of disputes over power sharing.

Armed conflict

By December, more than 1,500 civilians had been killed, thousands injured, and at least 1 million forcibly displaced as a result of violence in the western province of Mai-Ndombe and the eastern provinces of Ituri, North Kivu and South Kivu. Dozens of local and foreign armed groups as well as the Congolese security forces, continued to carry out serious human rights abuses, with impunity.

Widespread human rights abuses carried out by armed groups exposed the failure of the security forces – themselves responsible for major human rights violations – and the UN peacekeepers, to effectively ensure the protection of civilians and to restore peace.

Lack of accountability

While the authorities took some steps to bring perpetrators to justice for conflict-related human rights abuses, they failed to bring to account most of the high-ranking civilian and military officers suspected of committing or sponsoring such crimes, crimes which had resulted in over 3,000 deaths and 2 million people internally displaced between August 2016 and December 2017 in the Kasai region alone. Furthermore, several politicians and senior officers suspected of serious human rights abuses retained, or were given, privileged positions in state institutions, including the army and police. In September, the President told French journalists, who had asked for his position on past human rights abuses, that he had “no time to rummage in the past”. There was no progress on the prosecutions in connection with the December 2018 communal violence between the Banunu and Batende communities in Yumbi, Mai-Ndombe province in the west, in which over 600 civilians were killed over two days in orchestrated violence that, according to the UN Office of the High Commissioner for Human Rights, could have amounted to crimes against humanity.

In June, the military prosecution issued an arrest warrant against Guidon Shimiray Mwisa the [leader] of the militia, Nduma Defense of Congo-Rénové (NDC-R), for crimes under international law including murder, mass rape, and recruitment of children, committed by him or his militia. However, according to the UN Group of Experts, the NDC-R continued to carry out human rights abuses in North Kivu province, with the

collaboration of high-ranking Congolese [army] officers.[1] The authorities failed to take adequate steps to enforce the arrest warrant and bring Guidon Shimiray Mwisu to justice.

The military court trial of Ntabo Ntaberi Sheka, leader of a faction of the Nduma Defence of Congo, in which he was accused of serious human rights abuses in North Kivu province, came to a standstill in mid-2019 as the court continually postponed the trial without valid reason. His militia was believed to be responsible for crimes including the rape of at least 387 women, men and children during 2010.

During the year, local and international human rights groups repeatedly called on the government to hold Gédéon Kyungu Mutamba to account for crimes against humanity for which he had been convicted by a military court in Lubumbashi, (a city in the south-east), in 2009. He continued to enjoy freedom in a state-sponsored villa in Lubumbashi, having surrendered to the authorities in October 2016, after he escaped from prison in 2011.

Military courts heard a number of conflict related sexual violence cases. In November, for example, militia leader Frédéric Masudi Alimasi, (also known as Koko di Koko) received a life sentence in Bukavu, a city in the east, for killings, enforced disappearances, torture and rape. In the same month, a soldier was sentenced in Bas-Uélé province to 20 years’ imprisonment for raping two children aged three and four years.

International justice

In July, the ICC found Bosco Ntaganda guilty of war crimes and crimes against [humanity] committed in the eastern Ituri province during 2002-2003 and, in November, sentenced him to 30 years’ imprisonment.

In September, the Congolese army announced that it had killed Sylvestre Mudacumura, the military leader of the Democratic Forces for the Liberation of Rwanda (FDLR). Sylvestre Mudacumura was wanted by the ICC which issued a warrant for his arrest in 2012 for war crimes and crimes against humanity perpetrated by the FDLR in the east of the Democratic Republic of the Congo (DRC).

Freedoms of expression, association and assembly

In January, the government completely shut down the internet and banned several media outlets for 20 days, in an attempt to stop the publication of unofficial election results and to stem widespread protests over allegations of massive election fraud.

In March, the authorities announced that over 700 hundred people had been released from prison and that all illegal detention centres operated by the National Intelligence Agency had been closed on orders from the President. Those freed included prisoners of conscience and others who had been held in prolonged arbitrary detention. The

authorities allowed several exiled political and civil society activists, as well as foreign journalists and human rights defenders who had been made unwelcome for several years, to return to the DRC and carry out their activities.

However, civil authorities and the police continued to ban and violently repress peaceful assemblies and demonstrations with impunity. Authorities imposed the requirement to obtain prior authorization for demonstrations, in breach of the Constitution.

Throughout the year, at least 35 peaceful demonstrations were dispersed by the police who used excessive force against protesters, injuring at least 90 and arbitrarily arresting scores. In June, at least one protester died from a bullet wound in Goma in the eastern DRC after security forces fired at peaceful demonstrators. In July, the Kinshasa governor banned a demonstration to protest against a former justice minister being selected as a candidate for the Senate president. When the demonstration went ahead, the police used excessive force against the protesters. In August, police officers used violence to prevent a pro-Union for Democracy and Social Progress party rally which was held to denounce government corruption and promote good governance.

Right to health

According to the World Health Organization, at least 1,680 people died from Ebola, 5,000 from measles, and 260 from cholera epidemics. Measles and cholera infected 310,000 and 12,000 people respectively. Consistent efforts made by the authorities and the international community to address the situation were jeopardized by poor funding, security and logistical challenges, the continuing armed conflicts and communal violence.

Right to education

In September, the government introduced free primary education, a right enshrined in the Constitution, which could have benefitted millions of children. However, the progress was hindered by poor planning and infrastructure, and insufficient funding for primary schools(?). Teachers’ unions accused the government of implementing the policy to the detriment of their own lives and without their cooperation as school attendance increased significantly. Teachers’ strikes led to the closure of hundreds of schools for several weeks after the beginning of the September term.

Detention

Prison conditions remained dire. At least 120 prison inmates died from starvation, a lack of access to clean water and proper healthcare, including 45 at the Central Prison of Bukavu between January and October. While prisons were severely overcrowded and underfunded, little or no effort was made to improve conditions. Over 300 detainees escaped from prisons in Kongo-Central, Kasai-Central, Ituri and Tshuapa provinces.

Indigenous peoples

Indigenous Twa who were evicted from their land without free, prior and informed consent when the Kahuzi Biega National Park in the eastern DRC was established in 1975, were in dialogue with park authorities to resolve their grievances. However, repeated promises to provide alternative land, jobs and public services, and to release Twa held in prison for returning to the park, were not been met, and many Twa returned to their lands in the park in protest.

[1] See for example: UN, S/2019/469, 7 July 2019, para. 58: “Consistent with previously reported practices (S/2018/1133, paras. 63–68), the Group observed FARDC collaborating with NDC-R in new areas under the latter’s control in Masisi territory. The Group also witnessed FARDC tolerating the free movement of NDC-R elements and the use of FARDC uniforms by NDC-R cadres in areas under FARDC control (see annex 17). The Group was not aware of any FARDC operations against NDC-R during the period under review.” Full report available at <https://undocs.org/en/S/2019/469> (<https://undocs.org/en/S/2019/469>)

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