



**Economic and Social
Council**

Distr.
LIMITED

E/CN.4/2002/L.25/Rev.1
17 April 2002

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Agenda item 9

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD**

**Austria, Belgium, Bulgaria*, Canada, Denmark*, Estonia*, Finland*, France,
Germany, Greece*, Hungary*, Iceland*, Ireland*, Italy, Latvia*, Lithuania*,
Luxembourg*, Malta*, Monaco*, Netherlands*, Poland, Portugal, Romania*,
Slovakia*, Slovenia*, Spain, Sweden, Switzerland*, United Kingdom of
Great Britain and Northern Ireland: draft resolution**

2002/... Situation of human rights in the Democratic Republic of the Congo

The Commission on Human Rights

Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms as stated in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable human rights instruments,

Mindful that the Democratic Republic of the Congo is a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading

* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Geneva Conventions of 12 August 1949 for the protection of victims of war and Additional Protocol I of 1977 thereto, as well as to the African Charter on Human and Peoples' Rights,

Noting General Assembly resolution 56/173 of 19 December 2001 and previous resolutions of the Assembly and the Commission on the subject, as well as Security Council resolutions 1304 (2000) of 16 June 2000, 1332 (2000) of 14 December 2000, 1341 (2001) of 22 February 2001, 1355 (2001) of 15 June 2001, 1376 (2001) of 9 November 2001 and 1399 (2002) of 19 March 2002,

Recalling the Ceasefire Agreement signed at Lusaka, as well as the Kampala plan and Harare sub-plans for disengagement and redeployment,

Concerned at all violations of human rights and international humanitarian law in the territory of the Democratic Republic of the Congo by parties to the conflict, as mentioned in the reports of the Special Rapporteur, including acts of and incitement to ethnic hatred and violence, and especially at the alarming situation in the parts of the country controlled by the rebels,

Recognizing that promotion and protection of human rights for all are essential for achieving stability and security in the region and will contribute to the creation of the necessary environment for cooperation among States in the region,

Noting with satisfaction that the inter-Congolese dialogue has indeed begun, and encompasses all the Congolese parties,

Recalling its decision to request the Special Rapporteurs on the situation of human rights in the Democratic Republic of the Congo and on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to carry out a joint mission to the Democratic Republic of the Congo, while regretting that the security situation has not yet allowed such a mission,

Encouraging the Government of the Democratic Republic of the Congo to fulfil its earlier commitments, including to the United Nations High Commissioner for Human Rights, to restore and reform its judicial system in accordance with relevant international conventions, and to put an end to the trying of civilians by the Military Court,

Welcoming the continuing dialogue between the authorities of the Democratic Republic of the Congo and Burundi, urging them to continue their efforts and emphasizing in this respect that the settlement of the crisis in Burundi would contribute positively to the settlement of the conflict in the Democratic Republic of the Congo,

1. *Welcomes:*

(a) The various reports submitted by Mr. Roberto Garretón, the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo;

(b) The visit by the Special Rapporteur, Mr. Garretón, to the country from 20 July to 1 August 2001 and the recent mission undertaken by his successor, Ms. Iulia Antoanella Motoc, from 13 to 19 February 2002, to evaluate the current situation in the country;

(c) The activities of the Human Rights Field Office in the Democratic Republic of the Congo, while encouraging the Government to work with and to strengthen further its cooperation with the Office;

(d) The statements by the President of the Democratic Republic of the Congo that no more children will be recruited as soldiers and, in that connection, the ratification by the Democratic Republic of the Congo of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the commitment by the Government of the Democratic Republic of the Congo to cooperate with the United Nations agencies and non-governmental organizations in ensuring the demobilization and reintegration of child soldiers, and measures undertaken by the Government in this respect, and encourages other parties to the conflict to do the same;

(e) The continued presence and increased deployment of the United Nations Organization Mission in the Democratic Republic of the Congo in support of the implementation of the Ceasefire Agreement signed at Lusaka and the relevant Security Council resolutions;

(f) The meeting held in Gaborone from 20 to 24 August 2001 to prepare for inter-Congolese dialogue, the signature by all the parties concerned of a declaration undertaking to release all prisoners of conscience, permit the free movement of goods and persons and protect the civilian population, and the continuing inter-Congolese dialogue in Sun City, South Africa, facilitated by Sir Ketumile Masire;

(g) The release by the Government of the Democratic Republic of the Congo of human rights defenders and its lifting of some restrictions on non-governmental organizations, including the formalities to be undergone before being allowed to set up and operate;

(h) The adoption by the Government of the Democratic Republic of the Congo of the Political Parties Act, No. 001 of 17 May 2001, and the prospects for openness and tolerance that that holds out, and *invites* the Government to persevere in this course and ensure that the law is fully upheld to the benefit of all political trends in the Democratic Republic of the Congo;

(i) The work of the Special Representative of the Secretary-General for the Democratic Republic of the Congo and Chief of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC);

(j) The announcement by President Kabila that the Military Court shall no longer try civilians, and *urges* that trials of civilians by the Military Court should cease entirely and all detention centres not under the control of the Public Prosecutor's Office should close;

(k) The commitment by the President of the Democratic Republic of the Congo to improve the human rights situation, including his participation at the fifty-seventh session of the Commission, while encouraging him to translate his commitment into concrete action;

(l) The National Conference on Human Rights held from 24 to 30 June 2001, and the efforts that have led to an improvement in the human rights situation in the Democratic Republic of the Congo;

2. *Expresses its concern:*

(a) At the adverse impact of the conflict on the situation of human rights and its severe consequences for the security and well-being of the civilian population throughout the territory of the Democratic Republic of the Congo, including the increase in the number of refugees and displaced persons, in particular in the eastern part of the country;

(b) At the situation of human rights in the Democratic Republic of the Congo, particularly in areas held by armed rebels or under foreign occupation, and at the continuing violations of human rights and international humanitarian law, including atrocities against civilian populations generally committed with complete impunity, while stressing in this context that occupying forces should be held responsible for human rights violations in territory under their control, and in particular *condemns*:

- (i) All massacres and atrocities committed in the Democratic Republic of the Congo, as constituting indiscriminate and disproportionate use of force, in particular those occurring in areas held by armed rebels or under foreign occupation;
- (ii) The occurrence of cases of summary and arbitrary execution, disappearance, torture, beating, harassment and arrest, the persecution of many individuals and the arbitrary detention for long periods of persons including journalists, opposition politicians, human rights defenders, people who have cooperated with the United Nations mechanisms and other members of civil society;
- (iii) The widespread use of sexual violence against women and children, including as a means of warfare;
- (iv) The continued recruitment and use of child soldiers by armed forces and groups including recruitment and abduction of children in the territory of the Democratic Republic of the Congo, in particular in North and South Kivu and in the Orientale Province;
- (v) The long and arbitrary custodial sentences handed down by the Military Court;
- (vi) The summary sentencings to death and executions carried out by the Congolese Rally for Democracy (Goma) and the occupying forces;
- (vii) The indiscriminate attacks on civilian populations, including on hospitals, in areas held by rebel and by foreign forces;
- (viii) The resumption of fighting in the east which continues to produce many casualties among the civilian population;
- (ix) The resumption of fighting around Moliro and the capture of Moliro by the Congolese Rally for Democracy (Goma), and *affirms* that this constitutes a major breach of the ceasefire;
- (x) The reprisals against civilian populations in parts of the country controlled by the Congolese Rally for Democracy (RDC) and Rwanda, on the one hand, and by breakaway groups of the Congolese Liberation Movement (MLC) and Uganda, on the other;

(c) The conflicts between the Hema and the Lendu ethnic groups in Orientale Province, where thousands of Congolese have already been killed and where Uganda, in de facto control of the area, is responsible for upholding respect for human rights;

(d) The excessive accumulation and spread of small arms and light weapons and the illicit distribution, circulation and trafficking of arms in the region and their negative impact on human rights;

(e) The violations of the freedoms of expression, opinion, association and assembly throughout the Democratic Republic of the Congo, more especially in the east;

(f) Acts of intimidation and persecution of representatives of the Churches, and killings of such persons in the eastern part of the country;

(g) The severe prevailing insecurity, which seriously affects the ability of humanitarian organizations to secure access to affected populations, especially in areas held by armed rebels or under the control of foreign forces, and *condemns* the killings of six International Committee of the Red Cross humanitarian workers on 26 April 2001 in Ituri Province, the perpetrators of which must be brought to justice;

(h) The illegal exploitation of the natural resources of the Democratic Republic of the Congo, in view of the link between that exploitation and the continuation of the conflict, and the systematic violation of the Congolese population's human rights, and *demand*s of the individuals, Governments and armed groups involved in the conflict that that exploitation should cease, emphasizing that the country's natural resources should not serve to finance the conflict;

3. *Urges* all parties to the conflict in the Democratic Republic of the Congo:

(a) To facilitate the re-establishment, without delay, of the sovereignty and territorial integrity of the Democratic Republic of the Congo in accordance with the Ceasefire Agreement signed at Lusaka and relevant Security Council resolutions;

(b) To protect human rights and to respect international humanitarian law, in particular, as applicable to them, the Geneva Conventions of 12 August 1949 for the protection of war victims and the Additional Protocols thereto of 1977, the Hague Convention of 18 October 1907 concerning the Laws and Customs of War on Land, the Convention on the Prevention and Punishment of the Crime of Genocide and other relevant provisions of international humanitarian, human rights and refugee law, and in particular to respect the rights of women and children and to ensure the safety of all civilians, including refugees and internally displaced persons within the territory of that country, regardless of their origin;

(c) To ensure the safety, security and freedom of movement of United Nations and associated personnel and the unhindered access of humanitarian personnel to all affected populations throughout the territory of the Democratic Republic of the Congo;

(d) To cease all military activity in the Democratic Republic of the Congo which is in breach of the Lusaka Agreement, the Kampala disengagement plan together with the Harare sub-plans for redeployment, and the relevant Security Council resolutions, and *enjoins* all foreign forces to withdraw without delay from the territory of the Democratic Republic of the Congo;

(e) To put an immediate end to the recruitment and use of child soldiers, which is in contravention of international human rights standards, and to extend full cooperation to the United Nations Organization Mission in the Democratic Republic of the Congo, the United Nations Children's Fund, the Special Representative of the Secretary-General on the impact of armed conflict on children, and humanitarian organizations for the speedy demobilization, return and rehabilitation of such children;

(f) To take and implement all necessary measures to create conditions for the voluntary return, in safety and dignity, of all refugees and displaced persons and to ensure their fair and lawful treatment;

(g) To allow free and secure access to areas under their control in order to permit investigations of violations of human rights and international human rights law;

(h) To establish and cooperate fully with the National Commission of Inquiry on the alleged massacres of a large number of refugees and displaced persons in the Democratic Republic of the Congo, and also with the Secretary-General and with the United Nations High Commissioner for Human Rights in addressing these allegations, with a view to the submission of a further report by the National Commission of Inquiry to the Secretary-General on the progress of its investigations on this question;

4. *Calls upon* the Government of the Democratic Republic of the Congo to take practical action:

(a) To comply fully with its obligations under international human rights law and to promote and protect human rights and fundamental freedoms, to shoulder its responsibility to protect the human rights of the population on its territory, and to take a leading part in efforts to prevent conditions that might lead to further flows of displaced persons and refugees within the Democratic Republic of the Congo and across its border;

(b) To continue to honour its commitments to reform and restore the judicial system, in particular to persevere in its declared objective of progressively abolishing the death penalty, and to reform military justice, in conformity with the provisions of the International Covenant on Civil and Political Rights, while encouraging it to maintain its current moratorium on executions;

(c) To put an end to impunity and ensure, as it is duty-bound to do, that those responsible for human rights violations and grave breaches of international humanitarian law are brought to justice;

(d) To strive harder to create conditions, in accordance with its commitments as stipulated in the Ceasefire Agreement signed at Lusaka, in particular the sections concerned with inter-Congolese dialogue, that would allow for a democratization process that is genuine and all-inclusive and that fully reflects the aspirations of all inhabitants of the country while ensuring that women are involved in this process, and to complete the procedures required to permit the activities of political parties and to prepare for the holding of democratic, transparent, free and fair elections;

(e) To ensure full respect for freedom of opinion and expression, including freedom of the press for all types of mass media, and for freedom of association and assembly; continue to cooperate with civil society and human rights organizations, and remove some of the restrictions that still affect the work of non-governmental organizations;

(f) To continue to facilitate and strengthen further its cooperation with the Human Rights Field Office in the Democratic Republic of the Congo;

(g) To cooperate fully with the International Tribunal for Rwanda in ensuring that all responsible for the genocide, crimes against humanity and violations of article 3 common to the Geneva Conventions of 12 August 1949 and Additional Protocol II thereto are brought to justice in accordance with international principles of due process, while taking note of the visit by the Registrar of the International Tribunal for Rwanda to the Democratic Republic of the Congo from 12 to 15 February 2002;

(h) To continue to guarantee the safety and freedom of movement of the staff of the United Nations Organization Mission in the Democratic Republic of the Congo and associated personnel;

5. *Calls upon* the Governments whose forces are in occupation of part of the territory of the Democratic Republic of the Congo to respect human rights and international humanitarian law in the areas still under their control;

6. *Decides:*

(a) To extend the mandate of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo for a further year, to request him to submit an interim report to the General Assembly at its fifty-seventh session and to report to the Commission at its fifty-ninth session on the situation of human rights in the Democratic Republic of the Congo and on the possibilities for the international community to assist with local capacity-building, and also to request the Special Rapporteur to continue to keep a gender perspective in mind when seeking and analysing information;

(b) To request the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo and the Special Rapporteur on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to carry out, as soon as security considerations permit and, where appropriate, in cooperation with the National Commission of Inquiry to investigate alleged human rights violations and breaches of international humanitarian law in the Democratic Republic of the Congo (formerly Zaire) between 1996 and 1997, a joint mission to investigate all massacres carried out on the territory of the Democratic Republic of the Congo, including those in the province of South Kivu and other atrocities referred to in the various reports of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, with a view to bringing to justice those responsible, and to report to the General Assembly at its fifty-seventh session and to the Commission at its fifty-ninth session;

(c) To request the Secretary-General to give all necessary assistance to the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo and to the joint mission, to enable them to discharge their mandates fully;

(d) To request the High Commissioner to provide appropriate technical expertise to enable the joint mission to fulfil its mandate;

(e) To request the international community to support the Human Rights Field Office in the Democratic Republic of the Congo in order, in particular:

- (i) To strengthen its involvement in programmes of technical cooperation, advisory services and human rights advocacy, including supporting efforts by the Government of the Democratic Republic of the Congo towards strengthening the judicial system;
- (ii) To strengthen its support for, and to continue to expand cooperation with, human rights non-governmental organizations in the Democratic Republic of the Congo, and to facilitate the activities of the joint mission, inter alia by providing funding;

7. *Recommends* the following draft decision to the Economic and Social Council for adoption:

“The Economic and Social Council, taking note of Commission on Human Rights resolution 2002/... of ... April 2002, endorses the Commission’s decisions:

“(a) To extend the mandate of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo for a further year and to request him to submit an interim report to the General Assembly at its fifty-seventh session and to the Commission at its fifty-ninth session on the situation of human rights in the Democratic Republic of the Congo and on the possibilities for the international community to assist with local capacity-building, and also to request the Special Rapporteur to keep a gender perspective in mind when seeking and analysing information;

“(b) To request the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo and the Special Rapporteur on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced and Involuntary Disappearances to carry out, as soon as security considerations permit and, where appropriate, in cooperation with the National Commission of Inquiry to investigate alleged human rights violations and breaches of international humanitarian law in the

Democratic Republic of the Congo (formerly Zaire) between 1996 and 1997, a joint mission to investigate all massacres carried out in the territory of the Democratic Republic of the Congo, including those in the province of South Kivu and other atrocities referred to in the various reports by the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, with a view to bringing to justice those responsible, and to report to the General Assembly at its fifty-seventh session and to the Commission at its fifty-ninth session.”
