



Democracy and the DRC: a failed encounter?

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The Centre for Security and Defence Studies (CSDS) of the Royal Higher Institute for Defence produces on an occasional basis brief assessments about current events in its e-Note series. These series and other publications are available on our website www.rhid.be.



On 20 December 2016, the Democratic Republic of Congo (DRC) could have gone through the first democratic handover of executive power in its history. Instead, the fragile democratic institutions that had emerged from the peace process pursued their progressive erosion, leading to major social unrest and political instability throughout the country over 2016. As the unstable foundations of democracy in the DRC are yielding under the regime's pressure, the country has been sliding towards a renewed period of political uncertainty. With President Kabila overstaying the end of his constitutional mandate, major political actors and representatives of civil society in the DRC have been negotiating the terms of a provisional power-sharing government to lead the country to long-awaited presidential elections. How was the

DRC headed towards a new political crisis? What are the failures of the democratic system that was negotiated in Pretoria and Sun City? What is at stake in the DRC, following the death of its most prominent political opponent, Etienne Tshisekedi?

Constructing democracy on the remnants of war

The Sun City agreement was aimed at putting an end to several years of deadly conflict in the DRC. A wide-reaching process of constitutional drafting was undertaken, which foresaw the creation of a transitional government where power would be shared between former belligerent groups and the central government, followed by the first post-conflict multiparty election in 2006. The Congolese elections of 2006 created tremendous expectations and excitements both domestically and internationally; the Congolese people massively went to the polling stations to elect their president,

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for the first time since 1960. Participation levels reached 71% of the electorate in the first round, and the event was qualified as “the most considerable event in Africa since the end of apartheid in South Africa” by William Swing, UN Special Representative of the Secretary General in the Democratic Republic of Congo².

Yet, the hopes triggered by the 2006 elections seem long gone now. The progressive consolidation of the government’s authoritarian curve was clearly illustrated by the Constitutional amendment of 15 January 2011, on the eve of the second multiparty elections since the return to democratic rule. The amendment transformed the two-round presidential election with an absolute majority of the votes casted into a single ballot with a relative majority. Notwithstanding the institutional and legal changes, the 2011 presidential elections were marred by serious irregularities and allegations of fraud, and raised major concerns over the intentions of the Presidential camp to further erode the safeguards set by the Constitution. In the following years, not only did the government continue to slide towards authoritarianism, tightening control over the democratic space, free speech and freedom of assembly, but it also resorted to repeated attempts at changing the Constitution and at instrumentalising justice. The derailing of the 2016 electoral process finished discrediting the country’s electoral institutions and exhausted any remaining faith in democratic governance in the DRC.

2016 Presidential elections: From expectations to despair

Indeed, from the perspective of the Congolese people, the presidential election of 2016 carried a strong symbolic weight; had Joseph Kabila stepped down as the Constitution foresaw, and had the government organised reasonably fair elections respecting the Constitutional calendar, this process would have strengthened the consolidation of democratic practices within the country. Respect of the democratic process, by the man who himself formally initiated the return to democratic rule in the DRC, was viewed as an opportunity to set the country on the path towards a transformed political system and a revision of governance practices. It could have led to a period of political appeasement, and potentially, it could have paved the way to future peaceful handovers of power. Ultimately, it would have indicated that former warring parties were now ready to compete in the political arena and would have kept the specter of war at bay. Hopes were, thus, high with respect to these elections.

These hopes were not rooted in the genuine belief that a new president and his government would drastically improve the livelihood of ordinary citizens. The observation that democracy did not necessarily deliver economic growth, a fairer distribution of resources nor a significant improvement in people’s living conditions was quickly reached by the Congolese³. The benefits from the country’s impressive average growth (7,7% in the period 2010-2015) and from the growth of the extractive industry bluntly failed to benefit the wider population of which 87,7% live under the poverty threshold of 1,25\$ a day⁴. Rather, the Congolese people’s hopes stemmed from a profound distrust in their political elite, and particularly, in the governing one; the hope they invested in the

² Quoted by Braeckman, Colette, in *Vers la deuxième indépendance du Congo* (Le Cri – Afrique éditions, 2009), p. 116.

³ Although the poverty rate was reduced by 7% between 2005 and 2012, overall poverty and precariousness, particularly of the overwhelming Congolese youth is crushing.

See: World Bank online data.

⁴ Reynders, Didier, “*Note stratégique pour l’Afrique centrale*”, 5 Octobre 2016.

elections expressed their willingness to see a largely unpopular President respect constitutional term-limits and go⁵. It was a hope for the consolidation of democratic norms and institutions, whereby politicians would swing, but institutions would endure. As such, elections would have contributed to the process of consolidating the most fundamental practices of democratic government, namely, elections, handovers of power, and respect for the Constitution. The Afrobarometer indeed suggests that a clear majority of Africans' preferred political regime is democracy⁶.

In this perspective, the failure to organise elections represents a severe hit to the prospect of democracy in the DRC⁷. Elections are an essential benchmark of a democratic system, which enables a polity to exercise their political freedom. By casting their vote, electors formulate a choice with regards to the executive and legislative composition of a government or legislative college which is going to make decisions on their behalf. The legitimacy, the accountability and the responsiveness of executive and legislative power is founded in this process. In the DRC, voters and parties who had high expectations from the exercise of their democratic rights in terms of participating in the decisions that affect their lives, and having their word to say on topics of public interest, were confronted to the increasing repressive stance of the regime. Instead, the democratic capital that had been built up since the transition to peace and multipartyism was curtailed by the increasingly repressive measures deployed by the government to prevent liberalization of politics and reform. In such a context, "the democratic power of elections", that is, their contribution in consolidating democratic norms even when they are not fully free and fair, is less likely to be unlocked in countries where unscrupulous leaders are prepared to retain power at any cost through repression⁸.

Sliding towards a de facto preservation of power

Large parts of domestic and international actors, as well as civil society and the Catholic Church, indeed opposed an extension of Kabila's mandate. Yet, the mobilization of a wide range of society has done little to curtail President Joseph Kabila's determination to remain in power. Kabila could not rely on political arguments (as Kagame did in Rwanda)⁹, neither on Constitutional loopholes (as

⁵ According to a survey made by the Congo Research Group and the Bureau d'études, de recherches et Consulting International between May and September 2016 across the country, the incumbent would only be granted 7,8% of voting intentions, and would arrive in third position after Etienne Tshisekedi (18% voting intentions) and Moïse Katumbi (33,3% voting intentions).

See: <http://www.jeuneafrique.com/368464/politique/presidentielle-rdc-katumbi-tshisekedi-kabila-kamerhe-vrais-enseignements-sondage-gec/>.

⁶ Although the Afrobarometer does not provide specific data on the DRC, its general trends on the continent show a large popular support for democratic systems.

See:

http://afrobarometer.org/sites/default/files/publications/Documents%20de%20politiques/ab_r6_policypaper_no36_les_africains_veulent_ils_de_la_democratie1.pdf.

⁷ Drawing on Staffan Lindberg's argument that elections are a driver of democratization and not simply its symptom. See: Lindberg, Staffan, *Democracy and Elections in Africa* (Baltimore: John Hopkins University Press, 2006).

⁸ Cheeseman, Nic, *Democracy in Africa: Successes, Failures, and the Struggle for Political Reform* (NY: Cambridge University Press, 2015), p. 173.

⁹ Political arguments can consist in pertaining that post-conflict states require political stability instead of political alternation, that elections can exacerbate tensions within fragile societies, or in lifting presidential term-limits by hailing the incumbent's achievements. In Rwanda, Kagame successfully passed a major Constitutional amendment which will enable him to remain in power until 2034, based on a "spontaneous" mass petition which was followed by a referendum in which 98,9% Rwandans supported their President's candidacy for a third mandate and the amendment of the Constitution.

Nkurunziza did in Burundi)¹⁰, to legitimate his executive term-limit evasion. As a result, the President supported by his parliamentary alliance, the *Majorité Présidentielle* (MP), had to resort to a broad range of manoeuvres in order to maintain himself in power. The government deployed a cocktail of legal and constitutional reform, territorial reform, threat-mongering, violent repression of demonstrations, arbitrary arrests of protestors and judicial manoeuvring to incapacitate political opponents in order to reduce the pressure exerted upon it. These different tactics will be briefly presented in this section.

Legal and constitutional instruments

Firstly attempting to proceed to a new constitutional amendment, the government sought to revise Article 220 of the Constitution which stipulates that “The republican form of the State, the principle of universal suffrage, the representative form of government, the number and length of the terms of office of the President of the Republic, the independence of the Judicial Power, the pluralism of political parties and trade unions may not form the object of a Constitutional amendment.”¹¹. By intending to amend this essential article, the government was endangering the very foundations of the democratic order built in the early 2000s. It was in fact seeking to unlock the Constitutional safeguards, which would, amongst others, open the way for a revision of Presidential term-limits. Facing fierce public opposition, the government was constrained to back down.

Yet, following this failed attempt, it moved to a second strategy; changing the electoral code in order to induce conditionality between the revision of the voting register and the organization of elections. In a country that extends over 2 million km² and with an estimated 75,000,000 inhabitants, the undertaking was considerable and significant challenges and delays were to be expected. Highly criticized, this provision encountered massive popular opposition and led to a series of strikes that were violently repressed by government forces, and which culminated, in January 2015, with the alleged death of 42 people (16, according to the government).

Instrumentalisation of electoral institutions and justice

Although the conditionality clause was withdrawn from the bill, the President of the electoral commission (Commission Électorale Nationale Indépendante - CENI), Corneille Nangaa, kept advocating for a delay of the electoral calendar by 16 to 17 months, so as to “render the electoral process fairer and more transparent”. From the onset, the role of the CENI has been severely criticized as the institution is perceived to be instrumentalized by the regime. Headed until November 2015 by abbot Apollinaire Malumalu, whose sudden illness left a vacuum at the head of the institution between December 2014 and October 2015, the CENI is chronically under-funded and has not been provided with the technical and financial means required to actually conduct its mandated activities on time and independently¹². To make matters worse, the rare declarations of its President cast a doubt over its proclaimed independence and have contributed to discrediting the institution altogether.

As an alternative, the government used the argument of constitutionality, referring to Article 70 which foresees that “at the end of his term, the President stays in office until the President-Elect

¹⁰ Legal loopholes refer to the intended or unintended ambiguity of the legal norm.

¹¹ See: <http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

¹² The CENI estimated the total cost for the organization of the presidential elections at 1,8 billion USD: <http://www.radiookapi.net/2017/02/16/actualite/revue-de-presse/le-potentiel-le-gouvernement-se-devoile-pas-delections-en-2017>.

effectively assumes his functions”¹³. The interpretation of this Article generated heated debate over its implications in the case where elections were not held. The opposition argued that according to Article 75, the President of the Senate would assume the function of head of state until elections were effectively held. This Article indeed states: “In the case of a vacancy, as a result of death, resignation or any other cause of permanent incapacitation, the functions of the President of the Republic, with the exception of those mentioned in Articles 78, 81 and 82, are temporarily discharged by the President of the Senate”¹⁴. Yet, the ruling coalition of the *Majorité Présidentielle* argued that if elections had not taken place, the Presidency would not be vacant and the provisions of this Article would, therefore, not apply. Seized by a group of Congressmen of the MP, the Constitutional Court ruled in favour of an extension of the incumbent’s term until elections were held. The Court’s ruling was interpreted as an instrumentalization of justice, and a proof of the Supreme Court’s subordination to the regime, *de facto* authorizing an extension of President Kabila’s mandate until elections could be organized in a “satisfactory manner”.

The latest example of the government’s instrumentalization of justice is the sentencing *in absentia* of presidential candidate, Moïse Katumbi, to 3 years of prison for the alleged plundering of a property. Judge Chantal Ramazani, President of the Peace tribunal of Lubumbashi (Kamalongdo), subsequently confessed that she had been blackmailed into sentencing Moïse Katumbi¹⁵. Fearing reprisals for speaking out over the case, she secretly left the country and now resides in France¹⁶.

A chaotic decentralization

In July 2015, in the midst of the preparation of the upcoming elections, the government proceeded to the unexpected revision of the territorial division of the country, a reform that should have taken place within 3 years of the establishment of the country’s political institutions, namely, by February 2009. This reform is indeed foreseen by the Constitution which stipulates that the DRC is composed of 25 provinces and Kinshasa. Yet, if the legality of this action cannot be questioned, its timing is very telling; it points to an underlying intention to reduce the political weight of some provinces and of their leaders and in particular, of Moïse Katumbi, the powerful governor of the rich Katanga province, ahead of the presidential elections. By doing so, the territorial reshuffle also contributed to further administrative confusion and served, yet again, the purpose of delaying the electoral calendar. Indeed, the government used the argument of the 6 year-long delay of the decentralization process to claim that local elections, including the election of local governors, were by far more urgent than that of the president. Initially planned for 31 August 2015, the election of governors was delayed 3 times before ultimately taking place on 26 March 2016. As the question of the timing of the several forthcoming electoral deadlines had been at the centre of the ongoing political crisis in the DRC¹⁷, the opposition claimed that holding the election of provincial governors was in fact an attempt by the CENI and the government to appease public outrage against the continuous sliding of the electoral process. This chaotic decentralization was, therefore, largely perceived as a new subversion strategy rather than a credible commitment to reform the country.

¹³ See: <http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

¹⁴ *Ibid.*

¹⁵ See: <http://www.levif.be/actualite/international/rdc-la-juge-ayant-condamne-l-opposant-katumbi-denonce-des-pressions/article-normal-529513.html>.

¹⁶ *Ibid.*

¹⁷ Beyond the presidential and legislative elections due by the end of 2016, the election of provincial governors, of senators, and the election of local administrators (mayors, local counselors, territorial administrators and district commissioners) need urgently to be held. In some cases, their legal mandates ended in 2011.

The national dialogue

In November 2015, President Kabila announced the opening of an “inclusive national political dialogue for credible and peaceful elections”. Although the exact content and the modalities of the process were framed in the vaguest possible terms, its stated objective was to discuss the electoral calendar, the securitization of elections, their funding, and the role of external partners. A large part of the opposition rejected the dialogue arguing that the Constitution had set clear guidelines and sufficient electoral institutions for the smooth transition of power after the end of Joseph Kabila’s second mandate. Yet, assuming that the government had no intention to organize elections on time, some parties adopted a more realistic and flexible approach; they sought to negotiate the terms of a transition period, that would smoothly lead the country to political alternation. This ultimate strategy contributed to dividing the opposition between a “pro-dialogue” camp and an “anti-dialogue” one.

The spectre of conflict and war

It is noticeable that in his call for a national dialogue, President Kabila referred to the risks of conflict, arguing: “should we burn the country down because we lost an election, or expose it to violent demands?”¹⁸. The dialogue, thus, appeared to be underpinned by threat-mongering rather than by a genuine intention to hold an inclusive dialogue for a peaceful and negotiated resolution of the ongoing crisis.

Increased violence and repression

The United Nations Joint Human Rights Office (UNJHRO) in the Democratic Republic of Congo (DRC) registered a 30% increase in the number of human rights violations committed in the country over the year 2016. It pertains that one of the factors explaining this sudden increase is to be found in the restriction of the democratic space which has accompanied the postponement of the 2016 presidential elections¹⁹. The UN office has documented more than 5,190 violations of human rights, of which 21% constitute attacks/violations on fundamental liberties and are linked to restrictions of the democratic space (as opposed to only 6,4% of violations in 2015). In addition, more than 65% of these violations have been perpetrated by the Congolese National Police (CNP) and the national intelligence agency (ANR) credited with respectively 48% and 16% of the registered violations of this kind²⁰. Major victims of this repression have been members of political parties (1105 victims), civil society organisations (348 victims), and media professionals (86 victims). In addition, the right to freedom of assembly has considerably been restrained, and demonstrations have been banned by several cities according to the political affiliations of demonstrators²¹. In parallel, several news outlets and in particular, radio channels have been shut down, and social media are frequently suspended from operating.

¹⁸ See : <http://www.radiookapi.net/2015/11/28/actualite/politique/joseph-kabila-convoque-le-dialogue-politique-national>.

¹⁹ “Note du BCNUDH sur les principales tendances des violations des droits de l’Homme au cours de l’année 2016”, Haut Commissariat des Nations Unies pour les Droits de l’Homme : https://monusco.unmissions.org/sites/default/files/bcnudh_-_communiqu%C3%A9_presse_-_note_annuelle_2016_.pdf.

²⁰ “Note du BCNUDH sur les principales tendances des violations des droits de l’Homme au cours de l’année 2016”, Haut-Commissariat des Nations Unies pour les Droits de l’Homme. In total, a clear majority (53,5%) of the violations were committed by government officials.

What are the prospects for democracy in the DRC?

While civil liberties and political freedoms were increasingly abridged, the prospect of holding presidential elections in the DRC in 2016 was slowly fading. International actors and donors voiced their concern over the evident slipping of the electoral agenda towards an indeterminate future. However, domestic and international outcry over the government's conduct has only seemed to reinvigorate the fervour of the presidential camp, with Minister of Communications and Media of the government, Lambert Mende, engaging into verbal jousting with foreign governments. Yet, the red line of 19 December 2016 has passed, and uncertainty regarding the future of the country remains.

The recent death of the most vocal and historical opposition leader, Etienne Tshisekedi, has added a layer of concern over the bleak prospects of democracy in the DRC. Over the past decades, the "Sphinx of Limete" had stood out for his opposition against the successive Congolese governments, and had become an iconic figure of the Congolese resistance and of the people's struggle for peaceful political alternation in the country. Although diminished by his illness and discredited by his tireless claim to have won the 2011 election, the progressive incapacitation of his rivals (Jean-Pierre Bemba, Moïse Katumbi) contributed to a semblance of rally of a fragile and divided opposition around the figure of Tshisekedi. His triumphal return in Kinshasa on 27 July 2016 confirmed that massive popular support for his lifelong struggle against authoritarianism in the DRC was unflagging. His last achievement was the signature of the agreement of the Saint-Sylvestre, on 31 December 2016, of which he became leader of the national Council for the supervision of the transition. Yet, Tshisekedi's death is likely to be a major blow to the advancement and consolidation of the agreement. By calling the government "to honour the memory" of the departed opposition leader²², but also by turning the return of the leader's body into a bargaining chip for the advancement of the agreement, the opposition saw in the death of "Tshitshi" an opportunity to exert pressure upon the government²³. On the other hand, the government, for its part, seems to have seized the occasion of the beheading of the *Rassemblement* to surreptitiously pursue the progressive sliding of the electoral process and to stir up divisions within the broader opposition and the UDPS (Union pour la démocratie et le progrès social, Tshisekedi's party). These dynamics seem to already be at play, with the Minister of Budget, Pierre Kangudia, recently claiming that the government was clearly unable to bear the costs of holding elections in 2017²⁴.

The balance of power within the opposition, but also between the opposition and the government is now fragilized. In such a context, concerns about a possible relapse of violence are legitimate. An inflexible supporter of non-violent opposition, Tshisekedi had succeeded in containing public outrage against the regime and in limiting the possible violent clashes between protestors and the police and the army, by favouring peaceful protesting methods such as the "journée ville morte". Yet the combination of a large disenfranchised youth population, which largely feels unrepresented

²² See Francis Kalombo's statement as quoted by Radio Okapi: <http://www.radiookapi.net/2017/02/15/actualite/politique/francis-kalombo-pour-honorer-tshisekedi-il-faut-mettre-en-application>.

²³ Of which Etienne Tshisekedi was the President of the oversight implementation committee, and whose actual content remained to be defined.

²⁴ See: <http://www.radiookapi.net/2017/02/15/actualite/politique/francis-kalombo-pour-honorer-tshisekedi-il-faut-mettre-en-application>.

by the ruling political class, and possibly radicalized by the latest manoeuvrings of the government, may be the right cocktail for a relapse of violence. Tshisekedi's departure may leave parts of the incredulous youth in a vacuum where embracing violent struggle may seem like the only option left. The emergence of non-partisan and non-violent activism within civil society movements such as the "*Lucha*" [*Lutte pour le changement*] is a positive development in organizing civil resistance against the government, yet the risk that a generalized feeling of hopelessness contributes to the radicalization of parts of society is more present than ever following the loss of Tshisekedi.

In this context, the risk is that Article 64 of the Constitution, which stipulates that the Congolese people have the duty to protect the Constitution against anyone who may exercise power in an unconstitutional manner, may be used to legitimize violent action. It is stated: "All Congolese have the duty to oppose any individual or group of individuals who seize power by force or who exercise it in violation of the provisions of this Constitution". Explicitly drafted in Chapter 4 dedicated to "The Duties of the Citizen", this provision was evoked by several civil society movements, including the *Lucha*, but also by the Congolese National Episcopal Conference (CENCO) and the bishops of the DRC as a possible response to what they consider to be an unlawful extension of Joseph Kabila's mandate. The question is, which means may the Congolese use in order to exercise their duty to protect their Constitution? On its website, the *Lucha* calls for a complete paralysis of society and the state; from civil and fiscal disobedience and peacefully occupying public spaces, to seizing the properties and belongings of the so-called "predators of democracy", the *Lucha* proposes various peaceful, but radical ways for citizens to take the matter into their hands. But as a young and grassroots civil society movement, it neither has the capacity nor the structures to mobilise across generations, to turn its popularity into political capital and to direct and control its own supporters.

With a recent history of authoritarian rule, followed by years of internationalized civil conflict, reversing political instability in the DRC is an immense undertaking. It requires addressing a culture of corruption, violence and impunity which is deeply grounded in the politicization of former rebel groups and their integration into the regular army, while responding to the challenges posed by rampant poverty, and entrenched ethnic and communal identities. In such a context, the ongoing political crisis has served as a catalyser for the violent expression of longstanding unresolved grievances. Hot spots of violence and insecurity are spreading across the country, with urban discontent linked to the economic downturn encountering local contestation of authority, power and resources and ethnically-inspired violence in rural areas.²⁵ The country is now standing at a crossroad and the conditions for a slow descent into chaos are ripe.

²⁵ Hot spots of violence have spread beyond the traditional Kivu provinces into the Kasai's, which have been the scene of repeated clashes between the *Kamuina Nsapu* militia and the Forces Armées de la République Démocratique du Congo (FARDC) over the past few months. The acts of violence and the violations of human rights have been jointly condemned by the African Union, the United Nations, the European Union and the Organisation internationale de la Francophonie on 28 March 2017.

See: https://eeas.europa.eu/headquarters/headquarters-homepage/23560/joint-communique-african-union-united-nations-european-union-and-international-organization-la_en